

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COVAD COMMUNICATIONS COMPANY)DOCKET NO.
)00 -0312
Petition for Arbitration Pursuant to)(CONSOL.)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

RHYTHMS LINKS, INC.)DOCKET NO.
)00 -0313
Petition for Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

ON REHEARING

Springfield, Illinois
January 3, 2001

Met, pursuant to notice, at 1:00 P.M.

BEFORE:

MR. DONALD L. WOODS, Examiner

SULLIVAN REPORTING COMPANY, by
Cheryl A. Davis, Reporter, #084 -001662

1 APPEARANCES:

2 MS. CARRIE J. HIGHTMAN
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5 Chicago, Illinois 60606

6 (Appearing on behalf of Covad
7 Communications Company and Rhythms
8 Links, Inc.)

9 MS. FELICIA FRANCO-FEINBERG
10 227 West Monroe
11 20th Floor
12 Chicago, Illinois 60606

13 (Appearing on behalf of Covad
14 Communications Company)

15 MR. CHRISTIAN F. BINNIG
16 MS. KARA K. GIBNEY
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18 190 South La Salle Street
19 Chicago, Illinois 60603

20 (Appearing on behalf of Ameritech
21 Illinois)

22 MR. MICHAEL S. PABIAN
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26 (Appearing on behalf of Ameritech
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1	I N D E X			
2	WITNESSES	DIRECT	CROSS	REDIRECT RECROSS
3	MELIA A. CARTER			
	By Ms. Franco-Feinberg	19	55/81/87	
4	By Mr. Pabian		23	71/86
	By Examiner Woods		53	70
5	TORSTEN CLAUSEN			
6	By Mr. Weging	88		
	By Mr. Binnig		93/144	
7	By Mr. Brown		136	
8				
9				
10				
11				
12	EXHIBITS		MARKED	ADMITTED
13	Covad 3.0 & 4.0		17	23
14	ICC Staff 1.0, 1.1, 1.2		88	93
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17				
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1 PROCEEDINGS

2 (Whereupon prior to the
3 hearing Covad Exhibits 3.0
4 and 4.0 were marked for
5 identification, and the two
6 witnesses were sworn by
7 Examiner Woods.)

8 EXAMINER WOODS: This is Dockets 00-0312 and
9 00-0313 Consolidated, petitions for arbitration of
10 Covad Communications Company and Rhythms Links,
11 Inc., back before the Commission on rehearing.

12 The purpose of today's hearing is for
13 the cross-examination of witnesses and the
14 introduction into the record of exhibits and
15 testimony.

16 At this time I'd take the appearances of
17 the parties, please, beginning with the Applicants.

18 MS. HIGHTMAN: Carrie J. Hightman, Schiff
19 Hardin & Waite, 6600 Sears Tower, Chicago, Illinois
20 60606, appearing on behalf of Rhythms Links, Inc.
21 and Covad Communications Company.

22 MR. BROWN: Craig J. Brown, 9100 East Mineral

1 Circle, Englewood, Colorado 80112, appearing on
2 behalf of Rhythms.

3 MS. FRANCO-FEINBERG: Felicia Franco-Feinberg,
4 appearing on behalf of Covad Communications
5 Company, 227 West Monroe, 20th Floor, Chicago,
6 Illinois 60606.

7 EXAMINER WOODS: On behalf of the Respondents.

8 MR. BINNIG: Christian F. Binnig and Kara K.
9 Gibney, law firm of Mayer, Brown & Platt, 190 South
10 La Salle Street, Chicago, Illinois 60603, appearing
11 on behalf of Ameritech Illinois.

12 MR. PABIAN: Michael S. Pabian, 225 West
13 Randolph Street, Floor 25D, Chicago, Illinois
14 60606, appearing on behalf of Ameritech Illinois.

15 EXAMINER WOODS: On behalf of Staff.

16 MR. WEGING: Yes. This is James Weking,
17 W-E-G-I-N-G, 160 North La Salle Street, Suite
18 C-800, Chicago, Illinois 60601, (312)793-8182,
19 appearing on behalf of Commission Staff.

20 EXAMINER WOODS: Any additional appearances?
21 Let the record reflect no response.

22 I understand we have a witness prepared

1 to testify today who was previously sworn. Is that
2 correct?

3 MR. WEGING: Yes.

4 MS. FRANCO-FEINBERG: Yes.

5 EXAMINER WOODS: Are we going to take
6 Mr. Clausen -- well, Mr. Clausen left the room
7 so --

8 MS. HIGHTMAN: What did you say?

9 EXAMINER WOODS: Off the record.

10 (Whereupon at this point in
11 the proceedings an
12 off-the-record discussion
13 transpired.)

14 EXAMINER WOODS: Let's do Ms. Carter.

15 MELIA A. CARTER

16 called as a witness on behalf of Covad
17 Communications Company, having been first duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FRANCO-FEINBERG:

21 Q. Ms. Carter, could you please state your
22 name and business address for the record?

1 THE WITNESS:

2 A. My name is Melia A. Carter, and my
3 business address has changed since my Verified
4 Statement. I now reside at 227 West Monroe, 20th
5 Floor, Chicago, Illinois 60606.

6 Q. And by whom are you employed and in what
7 capacity?

8 A. Covad Communications. I'm the Director
9 of ILEC Relations and External Affairs.

10 Q. Do you have a copy of Covad Exhibit 3.0
11 that is marked Verified Statement on Rehearing of
12 Melia Carter?

13 A. Yes.

14 Q. Do you have any changes or additions to
15 make to Covad Exhibit 3.0?

16 A. Yes, I do. On page 3, line 6, it states
17 -- at the end of line 5, beginning of line 6, it
18 states: "My Verified Statement is directed at those
19 two issues." We need to scratch out "those two"
20 and put "the first" and change "issues" to "issue",
21 singular.

22 Then on page 5 of my Verified Statement,

1 line 4, at the end of line 4 we should insert an
2 "and", and at the end of line 8 there should be a
3 period instead of a semi-colon, and then 9 through
4 18 should be struck out.

5 Q. Do you have any other changes to Covad
6 Exhibit 3.0?

7 A. Yes. Page 8, line 15, change the word
8 "overlay" to "existing".

9 And on page 21, line 18, there's a typo.
10 It says "NGCLC". It should be "NGDLC".

11 And then pages 27 and 28 the entire
12 testimony should be struck, and that's it for
13 Exhibit 3.0. There's a change in 4.0.

14 Q. Okay. We'll get to that.

15 A. Okay.

16 MS. HIGHTMAN: Can we go off the record for
17 just one second?

18 EXAMINER WOODS: Yes.

19 (Whereupon at this point in
20 the proceedings an
21 off-the-record discussion
22 transpired.)

1 Q. Ms. Carter, before we turn to Covad
2 Exhibit 4.0, I'd like to ask you, with the changes
3 that you just stated, if I asked you the questions
4 in Covad Exhibit 3.0 here today, would your answers
5 be the same?

6 A. Yes.

7 Q. And do you have a copy of Covad Exhibit
8 4.0 that is marked the Surrebuttal Testimony on
9 Rehearing of Melia Carter?

10 A. Yes, I do.

11 Q. Do you have any changes or additions to
12 make to Covad Exhibit 4.0?

13 A. Yes, I do.

14 Q. Okay. What would you like to change?

15 A. Well, my page numbers aren't lined up
16 with what was submitted to the Commission, so I'll
17 have to go off of the sentence.

18 Q. Do you have a question number that
19 you're referring to, Ms. Carter?

20 A. Question number 16. It starts out
21 "Ms. Chapman suggests". The fourth sentence
22 starts with "That is why". There's an "it"

1 missing, so it should say "That is why it is
2 critical".

3 Q. Okay. With that change, if I asked you
4 the questions in Covad Exhibit 4.0 here today,
5 would your answers be the same?

6 A. Yes.

7 MS. FRANCO-FEINBERG: Covad moves for the
8 admission of exhibits Covad Exhibits 3.0 and 4.0.

9 EXAMINER WOODS: Objections?

10 MR. PABIAN: No.

11 EXAMINER WOODS: The documents are admitted
12 without objection.

13 (Whereupon Covad Exhibits
14 3.0 and 4.0 were received
15 into evidence.)

16 MS. FRANCO-FEINBERG: Covad tenders Ms. Carter
17 for cross-examination.

18 EXAMINER WOODS: The witness is available for
19 cross.

20 CROSS EXAMINATION

21 BY MR. PABIAN:

22 Q. Good afternoon, Ms. Carter.

1 A. Hi.

2 Q. My name is Michael Pabian, and I'm
3 representing Ameritech Illinois in this proceeding.
4 How are you doing?

5 A. Good.

6 Q. Good.

7 Is it fair to say that you're here
8 representing the interests of Covad Communications
9 and that that's what your testimony relates to is
10 Covad Communications' position in this proceeding?

11 A. Yes.

12 Q. Okay. You're not -- none of your
13 representations are made on behalf of Rhythms. Is
14 that correct?

15 A. That's correct.

16 Q. Now your business position at Covad I
17 think you said is managing Covad's business
18 relationship with SBC Communications and its
19 affiliates. Is that correct?

20 A. With SBC -- yes, that's correct.

21 Q. Is it fair to say that your function
22 allows you to become familiar with the business

1 plans of Covad Communications?

2 A. To the extent that they concern policy
3 type issues from a regulatory perspective, that's
4 true.

5 Q. Okay. At least as they relate to ILEC
6 provision of access to the network and UNEs, would
7 it be fair to say that it's an essential part of
8 your function to be familiar with the business
9 plans of Covad Communications?

10 A. As they relate to our relationship with
11 the ILEC, that's true.

12 Q. Right. Okay.

13 What services does Covad Communications
14 offer? I mean what is its business?

15 A. We offer high speed access to the
16 Internet via DSL.

17 Q. Okay. And that's essentially what we're
18 talking about in this proceeding, right, that
19 aspect of Covad's business? Is that correct?

20 A. Correct.

21 Q. In what states does Covad do business
22 today?

1 A. We do business in most states across the
2 nation. I can't name them all.

3 Q. All right. Let's go backwards. Are
4 there any states that Covad doesn't do business in
5 that you're aware of?

6 A. I'm sure there are. I can't name them
7 all offhand, but, again, we have a national
8 network.

9 Q. A national network. So is it fair to
10 say that Covad does business in almost every state
11 in the country?

12 A. That would be close. I can't say that
13 it would be every state, but.

14 Q. But pretty close.

15 A. (Witness nods head up and down.)

16 Q. Okay.

17 MS. HIGHTMAN: Say yes. You need to speak.

18 A. Oh, yes. I'm sorry.

19 Q. In your testimony you said that
20 provision of residential service was the focus of
21 Covad. Is that correct?

22 A. Yes. I'm just trying to find it. Do

1 you know where you read that?

2 Q. I'm sorry. Your answer was yes?

3 A. Yes.

4 Q. Okay. Yet there's a portion of your
5 testimony where you talked about selling services
6 to ISPs. Is that correct? Could you help me
7 understand how those two relate?

8 A. We have ISP partners that sell our DSL
9 service through them. They're channel partners.
10 They sell to residential and business end users.

11 Q. So you're not selling services to the
12 ISPs?

13 A. We partner with the ISPs to sell our
14 services, so the ISPs put their services, which is
15 the Internet portion, and sell our DSL portion of
16 the service to end users.

17 Q. Okay. So when the package gets put
18 together, is the ISP your customer that uses your
19 service to provide service to the residence
20 customer or is the residence customer your
21 customer?

22 A. Both.

1 Q. Okay. Could you explain? For what
2 piece is the residence customer your customer?

3 A. Well, in some instances we have a direct
4 marketing channel as well.

5 Q. A direct marketing channel to who? For
6 what?

7 A. For DSL.

8 Q. A direct marketing channel to?

9 A. End users.

10 Q. To ends users.

11 A. (Witness nods head up and down.)

12 Q. In that case you wouldn't be dealing
13 with ISPs?

14 A. Correct.

15 Q. Okay. So when you the talked about the
16 partnership relationship with the ISPs, in that
17 scenario the ISPs are your customers?

18 A. They're a channel partner to sell our
19 service.

20 Q. Okay. When you issue a bill for that
21 service, who do you bill? The ISP or the --

22 A. I don't get involved with the billing.

1 Q. Okay.

2 A. Again, my role is to deal with the ILEC,
3 not the ISPs.

4 Q. No, I understand that. I'm trying to
5 understand who you are providing service to, who is
6 your customer in that scenario. Is the end user
7 your customer or is the ISP your customer?

8 A. They are both our customers.

9 Q. Okay. So you end up billing the end
10 user, the residence customer.

11 MS. FRANCO-FEINBERG: Objection; asked and
12 answered.

13 EXAMINER WOODS: I think she said she doesn't
14 know about that.

15 Q. You don't know.

16 A. I don't get involved in the billing
17 aspect. I don't get involved on the retail side of
18 our company. I deal with the ILEC.

19 Q. Okay. So you can't actually tell me
20 that the residence end users are your customers.

21 A. They are our customers.

22 Q. Well, you just told me you can't tell me

1 if you bill them.

2 MS. FRANCO-FEINBERG: Objection; asked and
3 answered.

4 EXAMINER WOODS: This is a different question.

5 Q. Is that -- I mean --

6 A. I believe who provides the bill to the
7 end user is irrelevant whether they're our customer
8 or not. They are obtaining Covad service.

9 Q. Okay. Now if Ameritech provides UNEs
10 let's say to Covad and Covad uses those UNEs to
11 provide service to a residence customer, is that
12 residence customer Ameritech's customer?

13 A. No, it's Covad's customer.

14 Q. Okay. Because Ameritech doesn't bill.

15 A. Well, we don't tell the end user they're
16 getting Ameritech service.

17 Q. Okay. Just to recap though, you don't
18 know and you can't tell me that the residence
19 customers are getting bills from Covad. Right?

20 MS. FRANCO-FEINBERG: I'm going to object to
21 this line of questioning as irrelevant,
22 argumentative, and already been answered.

1 MR. PABIAN: Okay.

2 EXAMINER WOODS: I think it was asked and
3 answered.

4 MR. PABIAN: Okay. That's fine. Okay.

5 EXAMINER WOODS: I'm confused about the
6 relevance, too, but if he's done, that's fine.

7 MR. PABIAN: Okay.

8 Q. Is it true that Covad's September
9 199910Q indicated that it has more business
10 customers than residence customers?

11 A. I haven't seen the September 199910Q.

12 Q. I'm sorry; September 2000.

13 A. Okay. I haven't seen that either.

14 Q. You haven't seen it, so you don't -- do
15 you know if that's true on a nationwide basis?

16 A. I can't say one way or the other. I
17 haven't researched it.

18 Q. Okay.

19 A. On a nationwide basis.

20 Q. Okay. When did Covad start providing
21 service in Illinois?

22 A. I wasn't with the company then, so,

1 again, I can't answer that.

2 MR. PABIAN: Okay. If we could have an
3 on-the-record data request then. If you could let
4 us know if on a nationwide basis Covad serves more
5 business customers than residence customers, we'd
6 appreciate it, and then also indicate when Covad
7 started business in Illinois.

8 MS. FRANCO-FEINBERG: I don't understand the
9 relevance of your first data request. We've
10 provided information regarding Illinois as part of
11 our testimony.

12 MR. PABIAN: Well, I think it goes to the
13 credibility of Covad's position in this case, that
14 its focus is on residence customers.

15 MS. FRANCO-FEINBERG: I think that
16 mischaracterizes Covad's testimony in this case.

17 MR. PABIAN: Okay. We would still make the
18 request.

19 EXAMINER WOODS: Do you object or are you
20 going to provide it?

21 (Pause in the proceedings.)

22 MS. FRANCO-FEINBERG: Okay. Covad will

1 provide answers to the two data requests.

2 MR. PABIAN: Okay. Thank you.

3 EXAMINER WOODS: Thank you.

4 MS. FRANCO-FEINBERG: I'm sorry. Could you
5 repeat your first request? What was your first
6 request?

7 MR. PABIAN: On a nationwide basis, statistics
8 regarding the number of business customers versus
9 the number of residence customers.

10 MS. FRANCO-FEINBERG: You want actual numbers?

11 MR. PABIAN: Yes.

12 MR. BINNIG: Whatever numbers, most recent
13 published numbers that you published. You
14 published them in your 10Q.

15 MS. FRANCO-FEINBERG: So it would be publicly
16 available to Ameritech?

17 MR. BINNIG: Yeah, but we want it from you so
18 it's in the record.

19 MS. HIGHTMAN: Do you have a copy?

20 MR. BINNIG: We have an electronic version.
21 We don't have a hard copy.

22 MS. HIGHTMAN: And the second one was just

1 when they first started serving customers in
2 Illinois?

3 MR. PABIAN: Right.

4 MR. BINNIG: First started providing service
5 in Illinois.

6 MR. PABIAN: Right. Okay.

7 Q. Ms. Carter, several places in your
8 testimony you indicate that, in so many words, and
9 let me know if I'm mischaracterizing your
10 testimony, but that line sharing is the centerpiece
11 of Covad's roll-out of residential ADSL service in
12 Illinois. Is that a fair statement?

13 A. That's true.

14 Q. Okay. Assume with me, if you will, that
15 Pronto doesn't exist. Okay? Is it fair to say
16 that subject to constraints on the DSL capabilities
17 of a given loop, Covad can utilize line sharing in
18 connection with the existing network configuration
19 to provide residential ADSL service?

20 A. In certain circumstances that's true.

21 Q. Is Covad providing residential ADSL
22 services today using line sharing?

1 A. Yes, we're trying very hard to.

2 Q. Do you know how many customers you have
3 in Illinois today?

4 A. I believe -- did I state that in my
5 testimony?

6 MS. FRANCO-FEINBERG: I believe that that's
7 proprietary to Covad.

8 MR. PABIAN: Well, we'll accept it under cover
9 I suppose.

10 MS. HIGHTMAN: Do you want to go on the
11 proprietary record, in camera?

12 EXAMINER WOODS: Rather than doing that , why
13 don't we have another on-the-record data request
14 for that number under cover.

15 MR. PABIAN: Okay. That would be fine. If
16 you could provide to us, under proprietary cover is
17 fine, the number of ADSL customers you have in
18 Illinois today utilizing line sharing.

19 Q. Okay. For the purposes of argument
20 assume with me, if you will, that Project Pronto is
21 an overlay network that would not involve the
22 removal of existing copper facilities. Okay?

1 A. Okay.

2 Q. And that it would not involve any
3 automatic migration of existing voice customers,
4 Ameritech voice customers, from their existing
5 service loop facilities. In that situation, isn't
6 it fair to say that Covad has the same ability to
7 provide ADSL services via line sharing to those
8 customers as it does in the absence of the Pronto
9 network?

10 A. Potentially no.

11 Q. Potentially no. Okay. Would you
12 explain?

13 A. It really depends on how SBC/Ameritech
14 deploys their capital dollars in the future for
15 maintenance of their plant. So, for example, if
16 SBC/Ameritech has two networks, we all know that
17 ILECs allocate so much money every year to their
18 capital budget. It's kind of a no-brainer that
19 SBC's incentive will be to deploy the capital
20 dollars towards the architecture where they'll have
21 the most growth opportunity, which is the Pronto
22 architecture. If that's the case, then the

1 existing network may deteriorate to a point where
2 it's not available for use in a DSL environment by
3 end users and by CLECs.

4 Q. So your only condition on that I suppose
5 then, what you're saying is -- your only hesitation
6 to agree with my assumption is the deterioration of
7 the existing network. Right?

8 A. No, I don't think that's my only
9 hesitation.

10 Q. Okay. Well, explain.

11 A. Oh, okay. In some instances where the
12 Project Pronto network is being deployed, the loop
13 links are too long to provide ADSL service, so, for
14 example, we may only be able to provide service
15 using IDSL in that case, which is a much slower
16 speed than ADSL.

17 Q. Well, I understand that, but if the loop
18 lengths are too long, they would be too long even
19 if Pronto wasn't there, right? My question was
20 aren't Covad's opportunities to provide ADSL in a
21 line sharing capacity the same whether or not
22 Pronto exists?

1 A. And I would still say no because there's
2 potentially an interference issue. I know --
3 although I'm not a technical witness, I know
4 there's an issue that is being addressed in the
5 T1E1 standards, that I'm sure Mr. Riolo can explain
6 in much more detail than I can, about an
7 interference issue that potentially may exist as a
8 result of the Pronto network.

9 Q. Okay. So that's pretty much it.

10 A. Yes.

11 Q. Okay. Good.

12 Are you personally aware of any plans by
13 Ameritech Illinois to let the existing non-Pronto
14 network deteriorate?

15 A. I'm not aware of any plans at this time.

16 Q. Okay. Thank you.

17 Sort of along the same lines, I believe
18 you indicated in your testimony that the Broadband
19 Service that is going to be offered by Ameritech
20 Illinois over the Pronto network is insufficient
21 for Covad's purposes. Is that correct?

22 A. I'm not sure if that's exactly how I

1 explain it, but that's --

2 Q. Well, if it's not insufficient, tell me.

3 A. Can you tell me where you're referencing
4 so I can refer to it?

5 Q. Okay. No, I just -- the question I was
6 getting at was whether Covad is satisfied with the
7 Broadband Service being offered over the Pronto
8 network.

9 A. We have reservations about the Broadband
10 Service Offering.

11 Q. Okay. Okay. I think one of your
12 objections is the length which -- questions about
13 the length which the service would be available.
14 Is that correct?

15 A. That's correct.

16 Q. In your testimony, Exhibit 3.0, on page
17 13, and I don't know if the page numbers of your
18 3.0 line up.

19 A. On page 13?

20 Q. Do you have it?

21 A. Does it start on question 12?

22 Q. Actually it -- well, it's actually in

1 the middle of the third paragraph of your answer to
2 question 12.

3 A. Okay.

4 Q. Actually it's the end, the very end of
5 that. It's on my page 13, lines 4 through 8, the
6 last sentence of the third paragraph of your answer
7 to question 12 where you say: "It is highly likely
8 that by the time Broadband Service Offering is
9 effectively available to Covad and other CLECs, we
10 will only be able to take advantage of it for a few
11 months - and then it is scheduled to disappear."
12 That's what your testimony says, right?

13 A. Potentially, yes. That's what my
14 testimony says.

15 Q. Can you tell me what schedule you're
16 referring to there?

17 A. I'm referring to the merger conditions
18 that expire in two years.

19 Q. But you're talking about scheduling a
20 service to disappear. I mean at least that's what
21 your testimony says. Are you referring to any
22 particular scheduled disappearance date?

1 A. I'm referring to the fact that the
2 merger conditions expire in two years .

3 Q. Right.

4 A. And then SBC has the opportunity to pull
5 the offering or make it a less viable offering than
6 what they're offering to CLECs today.

7 Q. But you yourself aren't aware of any SBC
8 plans or Ameritech Illinois plans to pull the
9 offering at that time, are you?

10 A. No.

11 Q. Okay. The word scheduled just threw me
12 there.

13 In connection with Covad's request to
14 unbundle the Project Pronto architecture, I think
15 there was some discussion in your testimony
16 concerning utilizing the architecture to provide
17 symmetric DSL services. Is that correct? Do you
18 recall that?

19 A. I think I specifically referenced
20 G.SHDSL.

21 Q. You are aware that that type of service
22 could not be provided in any kind of line sharing

1 capacity, are you not?

2 A. Today that's true.

3 Q. Well, over any form of copper subloop.

4 Well, let's back up. Isn't it true that that
5 technology uses -- currently uses the low -- if it
6 was provided over a copper subloop, would utilize
7 the frequencies normally occupied by voice band
8 communications?

9 A. Yes, that's true.

10 Q. Okay. So the discussion of G.SHDSL and
11 symmetric DSL services aren't really requests being
12 made for utilization of the Pronto architecture in
13 a line sharing capacity. By line sharing I mean
14 that would utilize let's say the copper subloop to
15 provide both voice and G.SHDSL services at the same
16 time.

17 A. I think you have to look at it in terms
18 of technological advances and what will be
19 available in the future. Again, maybe it's not
20 called line sharing, but there is a voice and data
21 capability that could go over there, over the same
22 line.

1 Q. Over the copper piece? Over the copper
2 subloop?

3 A. Well, I don't know technically how it
4 would travel. That's probably more an appropriate
5 question for Mr. Riolo, but I guess my point is
6 that as we progress here, technological advances
7 will take place, and things will be available in
8 the future that may not be available today, and we
9 just don't want that type of restriction to be put
10 upon us where SBC is dictating what type of
11 technology CLECs can use.

12 Q. Okay. But you're not disputing the fact
13 that that type of service today is not technically
14 capable of being provided in a line sharing manner
15 over copper facilities.

16 A. No, I'm not disputing that.

17 Q. Okay. Okay. Good.

18 You also mention the provision of ATM
19 quality of service type services in a fashion that
20 would provide customers with a certain guaranteed
21 quality of service. Isn't that correct?

22 A. That's correct.

1 Q. That's correct. Okay.

2 You are aware, are you not, that one of
3 the conditions of the Project Pronto Order deals
4 with the provision of constant bit rate class of
5 service?

6 A. Can you point where that is in the
7 order, just so I can reference it?

8 Q. Okay. It would be Appendix A, paragraph
9 4(a). Actually it's the third paragraph under
10 section 4(a).

11 A. Okay. I can't find Appendix A. Oh,
12 Appendix A. What was the reference?

13 Q. Section 4(a). If you have the same
14 pagination as mine, if you look on page -- at the
15 top of page 37, do you see that?

16 A. I have 36.

17 Q. I don't know if you have the same
18 pagination that I do. It's the FCC kind of
19 official printout.

20 A. I think that's what I have.

21 Q. Okay. Section 4(a) starts on page 36.

22 A. Correct.

1 Q. Do you see that?

2 A. Yes.

3 Q. Okay. If you go on to page 37, it's
4 actually the first paragraph on the top of page 37,
5 and if you would do me the favor of just reading
6 that paragraph.

7 A. "Specifically, the SBC/Ameritech
8 incumbent LEC will make available for deployment
9 for use by affiliated and unaffiliated advanced
10 service providers two virtual path circuits per end
11 user and CBR class of service for xDSL on a
12 remote-terminal- per-remote-terminal basis (if xDSL
13 capable) starting within six months of the
14 Commission's concurrence with SBC/Ameritech's
15 position on the ownership issues described in
16 paragraph 1 above consistent with this paragraph
17 and subject to the factors specified in paragraph 8
18 below."

19 Q. Thank you.

20 On page 3 of your direct testimony, you
21 indicated that unbundled access to the Project
22 Pronto platform --

1 A. Are you --

2 Q. Oh, I'm sorry. I'm sorry. This is on
3 lines 6 through 9 on page 3 of your Exhibit 3.0. I
4 don't know if that lines up. Actually it's the --

5 A. Does it start with "In particular"?

6 Q. Yes.

7 A. Okay.

8 Q. All right. Your Verified Statement will
9 focus on why unbundled access of Pronto is
10 necessary to Covad's plans to provide competitive
11 broadband services in Illinois. That's what you're
12 saying there, right?

13 A. Correct.

14 Q. If Ameritech were -- Ameritech Illinois
15 were to change its plan and decide not to deploy
16 Project Pronto at all in Illinois, does that mean
17 Covad would withdraw from the broadband services
18 market in Illinois?

19 A. No.

20 Q. No. Okay.

21 Is it fair to say that it's your
22 opinion, as a nonlawyer, however, that unbundling

1 the Pronto architecture that Covad is requesting in
2 this case meets the necessary and impair standards
3 as defined by the Supreme Court?

4 A. As a nonlawyer, I think a strong
5 argument could be made that it meets the necessary
6 and impair standards.

7 Q. Okay. Could you point to -- oh, strike
8 that.

9 Isn't one of the purposes of your
10 testimony here to, in fact, support Covad's
11 contention in that regard?

12 A. My purpose is to address our views on
13 that.

14 Q. Right.

15 A. Correct.

16 Q. Okay. Can you point to where in your
17 testimony you have provided any sort of qualitative
18 analysis about the -- I'm sorry -- quantitative
19 analysis, quantitative analysis associated with the
20 availability of alternative means of providing the
21 services Covad seeks to provide that involve
22 sources other than let's say unbundling Pronto

1 architecture?

2 A. What specifically are you asking for?
3 What type of analysis?

4 Q. Well, any sort of qualitative analysis
5 that would -- I'm sorry -- quantitative, any sort
6 of quantitative analysis that would support the
7 notion that unbundling the Pronto architecture
8 meets the necessary and impair standards as
9 articulated by the Supreme Court.

10 A. I personally -- I haven't personally
11 done anything like that.

12 Q. Okay.

13 At a couple of places in your testimony,
14 specifically on page 8 of your direct testimony and
15 I think on page 8 of your -- or whatever page it is
16 of your supplemental testimony, you've used a very
17 similar sentence that I will just read here:

18 "Incumbent LECs have discriminated against Covad
19 and other CLECs by providing line sharing only to
20 themselves, and using that competitive advantage to
21 build up market share."

22 MS. HIGHTMAN: What page are you on?

1 MS. FRANCO-FEINBERG: Are you on the
2 surrebuttal?

3 MR. PABIAN: That's on page 8 of 3.0 of
4 direct, and I believe it's repeated on at least my
5 page 8 of the surrebuttal.

6 MS. FRANCO-FEINBERG: Okay. I'm sorry. Can
7 you provide the specific line that you're quoting?

8 Q. Okay. 3.0, lines 6 through 8, and in
9 4.0 there's a reference. In 4.0, page 8, lines 14
10 through 17, you say "ILECs were using line sharing
11 as a competitive advantage against data CLECs by
12 denying them access to the line sharing that they
13 were providing for their own customers." Do you
14 recall those references?

15 A. Yes.

16 Q. You weren't talking about Illinois
17 there, were you?

18 A. I was talking about ILECs in general.

19 Q. But not -- your reference was not meant
20 to apply at all to Ameritech Illinois, was it?

21 A. It was meant to apply to ILECs in
22 general, including SBC.

1 Q. Okay. Was it intended to apply to
2 Ameritech Illinois?

3 A. No, not specifically.

4 Q. Not at all. Isn't that correct?

5 A. Again, it was meant to apply to
6 Ameritech Illinois' parent company, SBC, and other
7 ILECs who've used that tactic in the past.

8 Q. Okay. But it's not your contention that
9 Ameritech Illinois used that tactic, is it?

10 A. No.

11 Q. On the bottom of page 6 of your Exhibit
12 3.0, which is your direct testimony, you talk about
13 SBC's proposal for CLECs to have access to the
14 NGDLC only through its Broadband Service Offering
15 would prohibit CLECs from entering the market. Is
16 that correct?

17 A. That's correct.

18 Q. And you finish up that paragraph by
19 saying unless there are adequate, nondiscriminatory
20 means of ensuring that Covad and other CLECs have
21 access to consumers served by NGDLC systems, SBC
22 will be the only DSL provider to those customers.

1 Do you see that reference?

2 A. Yes.

3 Q. Are you indicating that the Ameritech
4 Illinois Project Pronto Broadband Service Offering
5 involves providing to itself or to its affiliate
6 with any access to that architecture that is not
7 also available to other CLECs?

8 A. Can you repeat the question?

9 MR. PABIAN: Could you read the question back,
10 please?

11 (Whereupon the requested
12 portion of the record was
13 read back by the Court
14 Reporter.)

15 A. That's a trick question. (Witness
16 laughs.) I think technically it's available to
17 both.

18 Q. Okay.

19 It is true, is it not, that the terms
20 under which Ameritech Illinois' data affiliate,
21 AADS, will have access to Project Pronto Broadband
22 Service or any UNE, any subloop involved that it

1 might use in the provision of DSL service, would be
2 the same terms and conditions that Ameritech
3 Illinois would make those services or facilities
4 available to any other CLEC?

5 A. Today that's true.

6 Q. Ms. Carter, in your surrebuttal
7 testimony, in response to question 16, the second
8 line of your response, you state that Covad
9 currently has more residential than business end
10 users in the state of Illinois. Is that correct?

11 A. Correct.

12 Q. Could you tell me how many residential
13 customers and how many business customers Covad
14 currently has in the state of Illinois?

15 MS. FRANCO-FEINBERG: That information, again,
16 is proprietary to Covad Communications.

17 MR. PABIAN: We want to make it a data
18 request.

19 EXAMINER WOODS: Let's make it part of the
20 same exhibit. I'm sorry; part of the same
21 response.

22 MS. HIGHTMAN: I thought he already asked for

1 it.

2 MR. BINNIG: No, that one we didn't ask for.
3 This is specific to Illinois.

4 MR. PABIAN: Yes, this was specific to
5 Illinois.

6 MS. FRANCO-FEINBERG: Are you make that an
7 on-the-record data request?

8 MR. PABIAN: Yes, an on-the-record data
9 request.

10 That's all.

11 EXAMINER WOODS: Okay. I just had a couple.

12 EXAMINATION

13 BY EXAMINER WOODS:

14 Q. In surrebuttal testimony, on my page 4,
15 it's question 4. No, wrong one.

16 A. Yes.

17 Q. I'm sorry. It's the next -- it's
18 question 5.

19 A. Question 5.

20 Q. In the second part of the answer you
21 refer to the Commission imposing a burden of proof
22 to demonstrate that providing line sharing over any

1 DLC technology is technically infeasible. What's
2 that reference to?

3 A. It's in the Commission's original order
4 in this case, in this proceeding.

5 Q. No wonder I didn't remember it. So
6 that's the original arbitration decision.

7 A. Yeah.

8 Q. It must have been something they've
9 changed. That's fine. I can find it.

10 A. But they were right the first time.

11 MR. PABIAN: Now now.

12 Q. Okay. And then on the verified
13 statement, question 19, it looks like it starts on
14 my page 20, "This argument fails to recognize",
15 line 2.

16 A. Yes.

17 Q. Okay. Is it your understanding, and if
18 it is, that's fine, because I have no understanding
19 at all, that all remote terminals always have fiber
20 components?

21 A. I think that's probably a Mr. Riolo
22 question.

1 Q. Okay. Well, then if we look at this
2 response where they conclude that incumbents must
3 provide unbundled access to the high frequency
4 portion of the loop by the remote terminal, if all
5 remote terminals don't have fiber, they could have
6 been referring to copper there, correct?

7 A. Potentially. I personally think it's
8 more generic than that.

9 EXAMINER WOODS: Okay. I'll ask Mr. Riolo.
10 That's all I had.

11 MS. FRANCO-FEINBERG: Your Honor, can we have
12 a few minutes before redirect?

13 EXAMINER WOODS: Sure. Let's take ten.

14 MS. FRANCO-FEINBERG: Thank you.

15 (Whereupon a short recess
16 was taken.)

17 EXAMINER WOODS: Okay. Back on the record.

18 MS. FRANCO-FEINBERG: Ms. Carter, I just have
19 a few questions for you on redirect.

20 REDIRECT EXAMINATION

21 BY MS. FRANCO-FEINBERG:

22 Q. Hearing Examiner Woods asked you a

1 little while ago what the basis for your statement
2 in your direct testimony was that the FCC requires
3 line sharing over fiber. Do you recall that
4 question?

5 A. Yes.

6 Q. And I believe you answered that you
7 couldn't say that all digital loop carriers were
8 fiber fed. What's the basis then for your
9 conclusion that the FCC ordered line sharing over
10 fiber-fed loops?

11 A. Well, in paragraph 91 the FCC refers to
12 digital loop carriers as -- I guess I can find it
13 in the order.

14 (Pause in the proceedings.)

15 They talk about incumbents must provide
16 unbundled access to the high frequency portion of
17 the loop at the remote terminal. The FCC, when
18 they entered into that decision and wrote this, had
19 to have known that most remote terminals are served
20 off of fiber. However, they didn't preclude fiber
21 from their ruling. They say that they're required
22 to unbundle the high frequency portion of the loop

1 even where an incumbent LEC's voice customer is
2 served by DLC facilities.

3 Q. Ms. Carter, Mr. Pabian asked you a
4 series of questions on his cross-examination
5 indicating that currently Covad has available to it
6 other options to provide DSL service other than the
7 Pronto architecture. He mentioned that, for
8 example, Covad has the ability to access Pronto
9 under the same terms and conditions as AADS and
10 also indicated that Covad is actually providing
11 line sharing today. So what's Covad's problem then
12 with the offering?

13 A. Well, there's a couple of problems which
14 I mention in my testimony. First of all, when SBC
15 strategized about the Project Pronto offering, they
16 did it under the umbrella of SBC and not an
17 affiliate, so only when the merger conditions took
18 place did they create a separate affiliate called
19 ASI where they moved all the advanced services
20 business plan over to ASI. Now, however, since
21 they had already strategized about this as SBC,
22 they moved forward with that plan, and ASI just

1 adopted that plan in conjunction with SBC's goals.

2 When SBC purchased Ameritech,
3 Ameritech's affiliate, AADS, is now under the same
4 situation as ASI, and since they're both SBC
5 affiliates, right now most of the directives are
6 being taken from Texas in the company, so it's not
7 too far off to say that AADS and ASI would have the
8 same business plans to move forward in the market.
9 However, CLECs do not have that opportunity for SBC
10 or Ameritech to take CLEC business plans into
11 consideration.

12 MR. PABIAN: I'd like to object to the answer,
13 there being -- well, I move to strike the entire
14 answer since there's a lack of foundation on her
15 knowledge of the strategization of the Pronto
16 architecture.

17 EXAMINER WOODS: I'm pretty troubled by that
18 too, Ms. Carter.

19 A. I think this --

20 Q. How are you aware of SBC's taking into
21 account ASI or its data affiliate's plans?

22 A. In our collaboratives in Texas there was

1 some discussion on this issue, and it was mentioned
2 that the Pronto strategy actually occurred before
3 the merger took place; that they were, in fact,
4 putting plans in place before the merger happened.

5 MR. PABIAN: This still doesn't -- I still
6 object because the fact that Pronto was developed
7 before the merger has no bearing on your conclusion
8 that was reached in your answer.

9 MS. HIGHTMAN: He's arguing. I mean this is
10 her testimony. She explained the basis for her
11 testimony. It doesn't go to its admissibility. If
12 he doesn't like her statements, he can
13 cross-examine her further on the statements she
14 made. She explained the basis for her statements.

15 MR. BINNIG: But you need to have a
16 foundation.

17 EXAMINER WOODS: And her foundation was
18 hearsay.

19 MR. BINNIG: It's hearsay.

20 MS. HIGHTMAN: But I mean they're no different
21 than the references in the Ameritech testimony to
22 the statements of the collaboratives. They've had

1 quotes out of collaborative transcripts. I mean
2 it's the same thing.

3 MR. BINNIG: First of all, she hasn't
4 identified the particular statement out of the
5 collaborative.

6 MS. HIGHTMAN: Then you can ask her.

7 MR. BINNIG: But the statement out of the
8 collaborative has no relationship to the foundation
9 necessary to talk about SBC's strategy pre-merger
10 or post-merger. Is she an employee of SBC? Has
11 she participated in meetings where that strategy
12 session, if there was one, took place?

13 MS. HIGHTMAN: She explained her basis. She
14 didn't say she was in a meeting, a strategy
15 meeting.

16 MR. BINNIG: But the basis is not an adequate
17 legal foundation.

18 MS. FRANCO-FEINBERG: It's a statement from
19 SBC at a public forum. It's an admission of the
20 company.

21 MS. HIGHTMAN: I mean they're claiming that
22 she's lying. You know, she's under oath.

1 MR. BINNIG: No, I'm not.

2 EXAMINER WOODS: No. It is just an
3 evidentiary standard that, while minimal, I must
4 admit I am equally troubled by it for her to
5 testify as to exactly what the basis of SBC's
6 strategy was without ever having been an employee
7 of the company. Now we do have a marginal
8 foundation which was essentially hearsay that
9 somebody in a meeting said so. Quite frankly, I'm
10 very troubled by that. I don't even think that
11 approaches meager as far as foundation goes, and
12 besides that, I'm not convinced it's overly
13 relevant to anything. The fact that SBC may or may
14 not have strategized to do something with their own
15 system has throughout this proceeding troubled me
16 as being anything other than what a normal company
17 would do.

18 MS. HIGHTMAN: Well, the issue is the timing
19 though. That's her whole point; when they made the
20 decision to do it; when the plans were developed.
21 I mean I think --

22 EXAMINER WOODS: But only if the decision

1 itself were in some manner anti-competitive, and
2 I'm still struggling with that whole ideal that
3 they formed a subsidiary to pick up on their
4 copper. Well, that's to me normal business.
5 That's what you do in this world. So I'll let it
6 stand. I don't think it's -- I think it's so
7 marginally relevant that it doesn't -- it's so
8 marginally relevant that I don't think it's worth
9 wasting much more time arguing the evidentiary
10 basis. So it will stand, but, again, I'm troubled
11 by it, and I don't think it's very relevant, but
12 we'll leave it in.

13 MS. FRANCO-FEINBERG:

14 Q. Ms. Carter, Ameritech's counsel also
15 asked you whether Covad provides residential
16 service in Illinois. Do you recall that?

17 A. Yes.

18 Q. Is residential service the focus of
19 Covad's business in Illinois?

20 A. It's a focus of Covad's business in
21 Illinois. We have others.

22 Q. Okay. If you also recall, Ameritech has

1 made an on-the-record data request regarding the
2 number of business customers and residential
3 customers that Covad serves nationwide. If the
4 numbers that Covad subsequently provides in a data
5 request response indicate that Covad serves more
6 business customers than residential customers, why
7 would that be the case?

8 A. Because we've been trying to get up and
9 running with line sharing in the SBC footprint.
10 Essentially line sharing is critical to our
11 residential roll-out, and we have had some issues
12 in getting the central offices ready, prepared, up
13 and running to offer line sharing, and one piece of
14 this is this proceeding. I mean we were expecting
15 to offer line sharing by June 6th, and here we are
16 still talking about line sharing issues, so as you
17 can see, there's been a significant delay not only
18 from a procedural perspective but also from a
19 technical perspective in getting the central
20 offices prepared for us to be able to effectively
21 roll out line sharing to residential end users.

22 Q. Ms. Carter, Mr. Pabian, Ameritech's

1 counsel, also asked you a series of questions
2 regarding what Covad would do if Pronto didn't
3 exist, and I believe you responded -- and
4 Mr. Pabian asked if you could provide DSL even if
5 Pronto did not exist. Do you recall that question?

6 A. Yes.

7 Q. And I believe you indicated that Covad
8 would be able to provide ADSL in some
9 circumstances. Can you tell me what those
10 circumstances would be?

11 A. It would be when the loop length and the
12 technical parameters are such that they can support
13 ADSL.

14 Q. And how often would that be the case
15 without Pronto?

16 A. I think there would be many
17 circumstances where we would not be able to provide
18 ADSL to end users that would be served ADSL out of
19 the Pronto architecture.

20 Q. Why not?

21 A. Because the loop lengths where Pronto is
22 being deployed are typically longer than the

1 technology will allow for ADSL.

2 Q. Mr. Pabian also asked you about the
3 terms and conditions under which Ameritech will
4 offer its wholesale Broadband Service, and you
5 responded that you had some reservations regarding
6 Ameritech's or SBC's wholesale Broadband Service
7 Offering. Can you please explain what you meant?

8 A. Well, I think one of the biggest
9 concerns is the fact that SBC/Ameritech is trying
10 to fit the Pronto architecture into a non-regulated
11 environment, meaning that other than price, which
12 they voluntarily agreed to arbitrate for a limited
13 period of time for the merger, you know, when the
14 merger conditions are in effect, any terms and
15 conditions that would apply to the Pronto
16 architecture, SBC's position is that CLECs don't
17 have a right to go through the 251 /252 procedures,
18 as afforded by Congress and the Act, to take care
19 of our grievances. So essentially under SBC's
20 theory, CLECs such as Covad, if we have a dispute
21 with Ameritech about terms and conditions as it
22 relates to the Pronto architecture, could not come

1 to the Illinois Commerce Commission for a
2 resolution of those issues, and, in effect, that
3 would strengthen their market power because CLECs
4 would be resigned to a take-it-or-leave-it
5 situation where the terms and conditions would be
6 dictated to them.

7 Q. Ms. Carter, in response to Mr. Pabian's
8 questions you also indicated that you were
9 concerned whether the Broadband Service Offering
10 would be available following the end of
11 SBC/Ameritech's merger condition period. Can you
12 explain what you meant by that?

13 A. Well, at the end of SBC/Ameritech's
14 merger period, at the end of the two years,
15 SBC/Ameritech would have the ability or the option
16 to roll their affiliate into their retail side,
17 into their retail umbrella, and it wouldn't be a
18 separate affiliate as it is today.

19 Q. And why would that trouble Covad?

20 A. Well, it would trouble Covad for several
21 reasons, one of which, again, as I get back to the
22 terms and conditions and the fact that our

1 technical needs are not the focus of SBC's roll-out
2 of Project Pronto, that essentially they would move
3 forward with their plans. They would move forward
4 deploying ADSL under SBC, and then CLECs would be
5 in a situation where we couldn't compete. As I
6 stated in my testimony, at the end of the merger
7 condition, SBC could come back and say this is a
8 voluntary offering, and we're going to provide it
9 to you at any price we see fit, which I think Ms.
10 Chapman even alluded to in her testimony. So under
11 conditions such as that, CLECs would not be able to
12 compete in the market.

13 Q. Ms. Carter, if you recall, Ameritech's
14 counsel also asked you some questions regarding
15 G.HDSL. Do you recall that?

16 A. Yes.

17 Q. And I believe you responded that --

18 A. sHDSL.

19 Q. Oh, G.sHDSL. Thank you for the
20 clarification. And I believe you indicated that
21 G.sHDSL is not a line sharing product today. Is
22 that correct?

1 A. Correct.

2 Q. Given that you can't line sharing with
3 G.SHDSL today, why is it relevant to this
4 proceeding?

5 A. Well, I believe that SBC has stated in
6 their testimony that the Broadband Service Offering
7 is an effective means for CLECs to enter the
8 market, and I think our point is that unless we
9 have all the features and functionalities available
10 to us to be able to enter that market and not just
11 be pigeonholed into a resale situation, that it's
12 truly not an effective means to enter the market.

13 Congress and the Act specifically
14 provided options. One was a resale option. The
15 other was an unbundling option, and, as we know,
16 voice providers had several unbundling options
17 available to them. What we don't want to do is
18 have SBC limit those options to us.

19 Q. With respect to G.SHDSL, is it possible
20 today even to have voice and data capability on the
21 same line with that technology?

22 A. Yes.

1 Q. Can you give us an example?

2 A. Voice over IP.

3 Q. Ms. Carter, if you recall, Mr. Pabian
4 asked you a question to the effect of is Broadband
5 Service Offering available to all CLECs equally.
6 Do you recall that?

7 A. Yes.

8 Q. And I believe your response was that it
9 was a trick question.

10 A. Correct.

11 Q. Can you explain what you meant by that?

12 A. Well, again, technically, it's available
13 from the same technical parameters equally, but,
14 again, getting back to the fact that we would be
15 limited under our 251/252 rights to exercise those,
16 we would not be able to have a way to arbitrate.
17 Obviously, their affiliate is probably not going to
18 arbitrate with them over the terms and conditions
19 that they put forth. CLECs need other options that
20 are available to them to provide service, and,
21 again, our business plans and our plans to deploy
22 service in the network may not mirror those of AADS

1 or ASI, so it's important for us to have those
2 options available to us.

3 MS. FRANCO-FEINBERG: We have no further
4 questions at this time.

5 EXAMINATION

6 BY EXAMINER WOODS:

7 Q. Is the reason this G.SHDSL is not being
8 provided now because it's only carried over fiber?

9 A. No.

10 Q. So if Covad bought an unbundled loop,
11 installed a DSLAM and an RT and had its own
12 splitter, it could provide that, right?

13 A. Right now G.SHDSL, Alcatel has it in the
14 testing phase. However, it's my understanding that
15 they expect to have it out on the market to be able
16 to use in a Litespan system sometime this year.

17 Q. Right. So once the electronics and the
18 line card is available, nothing stops Covad from
19 buying a loop, putting a DSLAM in, putting that
20 card -- putting that splitter card on the loop, and
21 going with this product. Right? Over a copper
22 loop.

1 A. Well, it's my understanding that the
2 card, and I guess Mr. Riolo can probably speak to
3 this more proficiently than I can .

4 Q. Oh, I'm sure he will.

5 A. But it's my understanding that the card
6 is being designed for the Litespan 2000 system that
7 would support -- would be a fiber-based system.

8 EXAMINER WOODS: I'll ask Mr. Riolo.

9 RE CROSS EXAMINATION

10 BY MR. PABIAN:

11 Q. Ms. Carter, isn't it true that the
12 Litespan 2000 system still uses copper from the
13 remote terminal to the customer's premises?

14 A. Yes.

15 Q. I think in response to some of your
16 counsel's questions you indicated that -- and I
17 don't have -- I'm working from memory here, so
18 correct me if I'm wrong -- that if Covad were
19 limited to the utilization of the broadband
20 characteristics of the Pronto network in the form
21 of the Broadband Service that's being proposed here
22 or offered by Ameritech, that Covad would be unable

1 to compete in the provision of ADSL service? Is
2 that what you said?

3 A. I'm sorry. Can you repeat the question?

4 Q. Well, is what you were saying, and I'm
5 trying to recall what you said, that if Covad's
6 access to the high capacity portion of the Pronto
7 network were limited to the Broadband Service
8 Offering that we're talking about here, that Covad
9 could not compete in the provision of ADSL service?

10 A. I think what I said was that SBC under
11 the Broadband Service Offering is limiting a CLEC's
12 rights from a regulatory perspective, and that if
13 you look at this practically, each customer that
14 migrates on to the Pronto network is migrating --
15 if you take into account SBC's position, is
16 migrating out of the regulatory arena, so over time
17 essentially the Telcom Act is -- there's no weight
18 to it because SBC's position would be that we can't
19 utilize our remedies under the Act since --

20 Q. No, that's not what I was asking you.

21 A. Okay.

22 Q. I mean I thought you said somewhere in

1 there that Covad would be prohibited from competing
2 in the provision of ADSL services. I mean I
3 thought you used the word you couldn't compete in
4 the provision of ADSL services.

5 A. Right, and if you keep going with what I
6 was talking about is if we're in the situation
7 where SBC has all the market power, and terms and
8 conditions are just dictated to us and we have no
9 remedies to resolve them, then how can we compete
10 in that environment?

11 Already today it's difficult to compete
12 in an environment where terms and conditions are
13 dictated. However, we do have the Commission to
14 help us resolve those issues. If you take that
15 level of procedural -- of our ability to get those
16 issues resolved, then how are we going to get those
17 issues resolved and how can we effectively compete?

18 Q. Okay. You're not saying here that that
19 service would be available to Ameritech's own
20 affiliate on any different terms and conditions
21 that they would be available to Covad, are you?

22 A. No, I'm not, but I guess the analogy

1 would be similar to me paying my husband to paint
2 my house. I don't really care what he charges me,
3 but my neighbor probably would, so, you know, there
4 is a difference on a competitive playing field.

5 Q. I think you indicated that you took
6 issue with the Ameritech position that the
7 Broadband Service provides a reasonable market
8 entry strategy for CLECs. Right?

9 A. Correct.

10 Q. Okay. Does that mean that if Ameritech
11 -- first of all, I'm assuming that Covad is already
12 in the market in Illinois. Is that correct?

13 A. Yes.

14 Q. Okay. And it's fair to say that Covad
15 got into the market and decided to enter into the
16 market even before Pronto was announced. Isn't
17 that correct?

18 A. Correct.

19 Q. Now, you mean to say by your answer or
20 imply by your answer that if for some reason
21 Ameritech Illinois were to decide not to deploy
22 Pronto at all, that Covad would exit the market in

1 Illinois or could not compete in the market in
2 Illinois?

3 A. No. If Pronto didn't exist, that's not
4 the case. I think there's a difference if Pronto
5 exists.

6 Q. Okay. So Pronto -- access to Pronto's
7 capabilities is not essential for Covad to provide
8 business in -- to provide service in Illinois.

9 A. It is. It is essential.

10 Q. So if Covad -- it is essential.

11 A. Uh-huh.

12 Q. So are you saying that if Pronto didn't
13 exist, Covad would exit Illinois?

14 A. No.

15 Q. Okay. That's abundantly clear.

16 A. I can elaborate.

17 Q. I think you indicated that you were
18 having some problems with line sharing in Illinois.
19 Is that correct?

20 A. In the SBC footprint, including the
21 Ameritech region, yes.

22 Q. Okay. It is true, is it not, that you

1 could have -- that you did have available to you at
2 any time and still do today the ability to enter
3 into the same line sharing agreement that is
4 available -- that Ameritech's affiliate, AADS, has
5 entered into?

6 A. I think the problems that I described
7 were more technical in nature.

8 Q. Okay. Okay.

9 But it is true, is it not, that Covad
10 has the ability today, if it wants to, to sign the
11 exact same line sharing agreement that was entered
12 into by AADS?

13 A. Yes, but that's not going to help me get
14 splitters in the central office.

15 Q. You don't mean to say though that the
16 difficulty you just referred to is something that
17 would not -- if there's a difficult with getting
18 splitters in the central office, that difficult
19 would also apply to any similar situation for AADS,
20 would it not?

21 A. I can't answer that affirmatively. I
22 don't know what problems AADS is having in regards

1 to line sharing.

2 Q. Early in your redirect you were asked a
3 question by counsel about the implication of the
4 Line Sharing Order, the applicability of the Line
5 Sharing Order provisions to line sharing over
6 fiber. Correct?

7 A. Correct.

8 Q. I ask you to read footnote -- actually,
9 if you would read for me this reference to
10 paragraph 17 of the Line Sharing Order. Okay. The
11 first sentence of paragraph 17 and then the
12 associated footnote, and you don't have to read the
13 citations of the footnote.

14 A. Okay. "Line sharing generally describes
15 the ability of two different service providers to
16 offer two services over the same line, with each
17 provider employing different frequencies to
18 transport voice and data over that line."

19 Q. And then the footnote.

20 A. And it says: "Line sharing through the
21 simultaneous use of discreet electromagnetic
22 frequencies on a single wire pair to provide

1 separate communication service is the only form of
2 line sharing considered in this order and is only
3 possible on metallic loops. Thus, fiber voice
4 transmission systems are not considered in this
5 order except if specifically noted otherwise."

6 Q. Thank you.

7 I'm also going to refer you to a section
8 of the rules adopted by the Commission in
9 connection with the Line Sharing Order, and this is
10 under Section 51.319?

11 MS. FRANCO-FEINBERG: Would you like us to
12 stipulate that the order says what you're going to
13 have her read into the record? I mean is there a
14 question or do you just want her to read it into
15 the record?

16 MR. PABIAN: Well, she was talking about what
17 the Line Sharing Order said, so we're getting into
18 a little bit more detail about what the Line
19 Sharing Order says about that.

20 EXAMINER WOODS: As long as we don't do too
21 much.

22 MR. PABIAN: Okay.

1 EXAMINER WOODS: I'm not a fan of reading
2 stuff into the record.

3 MR. PABIAN: Okay.

4 EXAMINER WOODS: So if it's short and we're
5 not going to do a whole lot of this, I don't mind.

6 MR. PABIAN: Okay.

7 Q. Could you just read subsection 6 there?

8 A. " Digital Loop Carrier Systems.

9 Incumbent LECs must provide to requesting carriers
10 unbundled access to the high frequency portion of
11 the loop at the remote terminal as well as the
12 central office, pursuant to Section 51.319(a)(2)
13 and Section 51.319 (h)(1).

14 Q. Okay. And then the last one, Your
15 Honor. Referring back to (h)(1) that was cited in
16 there, would you just read this, please, which is
17 the (h)(1)?

18 A. You aren't going to have me read (a)(2)?

19 Q. No, just (h)(1).

20 A. "The high frequency portion of the loop
21 network element is defined as the frequency range
22 above the voice band on a copper loop facility that

1 is being used to carry analog circuit switched
2 voice band transmissions."

3 Q. Ms. Carter, have you done any inventory
4 of DSL compatible versus non-DSL compatible loops
5 in Illinois?

6 A. For Covad?

7 Q. In any capacity.

8 A. Can you clarify your question? Any
9 inventory in regards to whom?

10 Q. On Ameritech Illinois' network. Have
11 you done any inventory of -- or any comparison or
12 any inventory of the location or the number of
13 non-DSL compatible loops versus DSL compatible
14 loops in Ameritech Illinois' network?

15 A. No.

16 Q. Then what is the basis for your
17 assertion that Project Pronto is being deployed
18 where there are a greater number of non-DSL
19 compatible loops?

20 A. Collaboratives and hundreds of documents
21 that SBC has stated that in where they've stated
22 that, in general, they're deploying Project Pronto

1 in areas that are not currently accessible to ADSL.

2 Q. You haven't identified any of those
3 documents in your testimony, have you?

4 A. No.

5 MR. PABIAN: That's all I have.

6 EXAMINER WOODS: Anything further?

7 MS. FRANCO-FEINBERG: Yes.

8 REDIRECT EXAMINATION

9 BY MS. FRANCO-FEINBERG:

10 Q. Ms. Carter, Hearing Examiner Woods
11 inquired if Covad could collocate a DSLAM at a
12 remote terminal so that it could provide G.SHDSL
13 today. Why would Covad -- would Covad do that
14 today? Collocate a DSLAM to use an unbundled loop
15 to provide G.SHDSL?

16 A. Probably not.

17 Q. Why not?

18 A. Because, again, collocation, as I stated
19 in my Verified Statement, is -- I think the FCC has
20 recognized that collocation itself causes costs and
21 delays, and if you look at doing that now in a
22 remote terminal environment, it is even exacerbated

1 than when you do it in a central office environment
2 where you have access to many, many more end users
3 than you have access out of a remote terminal.

4 Q. Ms. Carter, Mr. Pabian asked you if
5 Covad could sign the same line sharing agreement as
6 AADS to solve its line sharing problems. Do you
7 recall that question?

8 A. Yes.

9 Q. Does Covad have a line sharing agreement
10 in place with Ameritech today?

11 A. Yes.

12 Q. Has that solved its line sharing
13 deployment problems?

14 A. No.

15 Q. Ms. Carter, Mr. Pabian also asked you
16 that if you are able to compete and provide DSL
17 service without Pronto, why the fact that Ameritech
18 is now deploying Pronto makes a difference, and you
19 indicated that you could expand on your answer.
20 Can you please do so now?

21 A. Yes. Well, I think I talked about it
22 earlier that there are several things that would

1 impact it, and one is the regulatory issues.
2 Essentially we would be limited in scope to what we
3 could do under the Pronto architecture, and, again,
4 as end users migrate to what SBC would categorize
5 as a non-regulated network, CLECs would be left not
6 having those remedies available to them to go to
7 the Commission and get things resolved.

8 Also, there are -- it's my understanding
9 that there's an interference issue that potentially
10 could occur if you had the copper network and the
11 Pronto network operating together, and I believe
12 that is being addressed in the T1E1 standards, so
13 that may interfere with Covad's ability to provide
14 service in that regards.

15 I just lost my train of thought.

16 Q. Ms. Carter, would SBC have a competitive
17 edge if Pronto existed and it had access and Covad
18 did not have access?

19 A. Yes.

20 Q. Why?

21 MR. PABIAN: Your Honor, I will object to the
22 vagueness of the question and also the relevance

1 because you talked about SBC? I think we're
2 talking about Ameritech Illinois.

3 MS. FRANCO-FEINBERG: If you'd like me to
4 substitute Ameritech in the question, that would be
5 fine.

6 MR. PABIAN: And the vagueness of the
7 question.

8 EXAMINER WOODS: But also I think it assumes
9 facts not in evidence. If you want to pose it as a
10 hypothetical, I think we can get to your point.

11 MS. HIGHTMAN: Which was exactly what he was
12 doing in his hypothetical with Ms. Carter, so it's
13 a follow-up to that.

14 EXAMINER WOODS: Okay. If you want to pose it
15 as a hypothetical.

16 MS. FRANCO-FEINBERG: Okay.

17 Q. Ms. Carter, if you could assume that SBC
18 was deploying Project Pronto and it now exists, and
19 that -- I'm sorry -- or that Ameritech is deploying
20 Project Pronto and that it now exists, and that
21 Ameritech has access to the Pronto network, and
22 that Covad does not have the same access and must

1 provide ADSL services as it does today, what would
2 the impact be on Covad?

3 A. Well, again, as I stated in my
4 testimony, Covad does a lot of its business through
5 channel partners, IPS channel partners, and
6 essentially these ISP channel partners for the most
7 part are national carriers, and if Covad does not
8 have the national -- the ability on a national
9 basis, if we're blocked out of certain territory,
10 then essentially those ISPs will migrate away from
11 Covad to the provider that does have access to
12 those areas. So, in fact, Covad would be damaged
13 in that sense because we would be barred from
14 offering services in those areas.

15 MS. FRANCO-FEINBERG: Okay. Thank you.

16 MR. PABIAN: Could you read back counsel's
17 last question?

18 (Whereupon the requested
19 portion of the record was
20 read back by the Court
21 Reporter.)

22 (Pause in the proceedings.)

1 REXCROSS EXAMINATION

2 BY MR. PABIAN:

3 Q. Ms. Carter, isn't it true that the only
4 retail DSL services offered today by Ameritech in
5 Illinois are offered out of AADS?

6 A. That's my understanding.

7 Q. Okay. And isn't it true that AADS does
8 have access to the Pronto network only on the same
9 terms and conditions that are available to Covad?

10 A. With the exception of the joint
11 marketing requirements, that's true; the joint
12 marketing option, that's true.

13 Q. But from a technical network access and
14 the access to functionality, that access is the
15 same that's available to Covad.

16 A. Yes.

17 MR. PABIAN: Okay. That's all I have.

18 EXAMINER WOODS: I think this horse is just
19 about not to get up again.

20 MS. HIGHTMAN: We get the last word though.

21 EXAMINER WOODS: That's what I'm afraid of. I
22 hear a whinny.

1 REDIRECT EXAMINATION

2 BY MS. FRANCO-FEINBERG:

3 Q. Following up on Mr. Pabian's question,
4 if, in fact, that were the case, that we had the
5 same access as AADS, why would Covad be
6 disadvantaged?

7 A. Because SBC is deploying their network
8 under the guise of the business plans of its
9 affiliate and making decisions based on that.

10 MR. PABIAN: I'll object to the lack of
11 foundation.

12 EXAMINER WOODS: Sustained.

13 MS. FRANCO-FEINBERG: Thank you.

14 EXAMINER WOODS: Thank you, Ms. Carter.

15 (Witness excused.)

16 MR. PABIAN: Your Honor, just so the record is
17 clear, we move to strike that last answer.

18 EXAMINER WOODS: The answer will be stricken.

19 EXAMINER WOODS: Mr. Clausen.

20 Mr. Weging?

21 MR. WEGING: Yes.

22 EXAMINER WOODS: You're up, my friend.

1 (Whereupon an
2 off-the-record discussion
3 transpired, and ICC Staff
4 Exhibit 1.0, 1.1, and 1.2
5 were marked for
6 identification.)

7 EXAMINER WOODS: Okay, disembodied spirit, you
8 may come forth and call your witness.

9 MR. WEGING: I'd like to call Torsten Clausen
10 to the stand, please.

11 EXAMINER WOODS: He's there.

12 MR. WEGING: I believe the witness has already
13 been sworn?

14 EXAMINER WOODS: That's correct.

15 TORSTEN CLAUSEN
16 called as a witness on behalf of the Staff of the
17 Illinois Commerce Commission, having been first
18 duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WEGING:

21 Q. Could you state your name and business
22 address for the record, please?

1 THE WITNESS:

2 A. My name is Torsten Clausen, and my
3 business address is 527 East Capitol Avenue,
4 Springfield, Illinois 62701.

5 Q. And for whom do you work?

6 A. I work for the Illinois Commerce
7 Commission.

8 Q. Mr. Clausen, do you have with you three
9 documents or three sets of documents?

10 A. Yes, I do.

11 Q. Okay. Turning your attention to what
12 has been marked for identification as ICC Staff
13 Exhibit 1.0 (Clausen) 00-0312/00-0313 Rehearing, do
14 you recognize -- do you have that document in your
15 hand, sir?

16 A. Yes, I do.

17 Q. Let's do it that way.

18 EXAMINER WOODS: Yes.

19 A. Yes.

20 Q. Okay. Do you recognize that document?

21 A. I do.

22 Q. And what is that document?

1 A. That's the Direct Testimony of Torsten
2 Clausen in this docket number you just cited.

3 Q. And that document consists of one title
4 page and ten pages of testimony?

5 A. Yes, it does.

6 Q. And with the exception -- well, okay.
7 If I today, sir, were to ask you the questions
8 contained in Staff -- I'm going to limit it and
9 just call it Staff Exhibit 1.0 at this point. If I
10 were to limit the -- sorry. If I were to ask you
11 the questions contained in Staff Exhibit 1.0 today,
12 would your answers today be substantially the same
13 as the answers given in Staff Exhibit 1.0?

14 A. Yes, they would be.

15 Q. Okay. Do you have any changes,
16 amendments, or corrections to make to Staff Exhibit
17 1.0?

18 A. The only change I would make is to
19 strike the last question and answer on page --

20 Q. Well, the next to the last question and
21 answer, right?

22 A. Okay.

1 Q. Which on the PDF copy was page 10, lines
2 11 through 17, and they had to do with the GUI
3 issue?

4 A. That's right.

5 Q. And it's being stricken because of the
6 agreement of the parties?

7 A. That's correct.

8 Q. Thank you.

9 Now, Mr. Clausen, I'd like to turn your
10 attention to ICC Staff Exhibit 1.1 (Clausen)
11 Rehearing.

12 A. Yes.

13 Q. Do you have that document, sir?

14 A. Yes, I do.

15 Q. And what is that document?

16 A. That's the Rebuttal Testimony of Torsten
17 Clausen in this proceeding.

18 Q. Okay, and that testimony consists of a
19 title page and four pages of testimony?

20 A. That's correct.

21 Q. And if today I were to ask you the
22 questions contained in Staff Exhibit 1.1, would

1 your answers today be substantially the same as
2 those given in Staff Exhibit 1.1?

3 A. Yes, they would be.

4 Q. Okay. Do you have any additions,
5 corrections, or changes to make to Staff Exhibit
6 1.1?

7 A. No, I don't.

8 Q. Okay. Turning now to Staff Exhibit 1.2
9 (Clausen), could you identify that for the record,
10 please?

11 A. That is my surrebuttal testimony in this
12 proceeding.

13 Q. And that consists of a title page and
14 five pages of testimony?

15 A. That's correct.

16 Q. And if I were to ask you the questions
17 contained in Staff Exhibit 1.2, would your answers
18 today be substantially the same as the answers
19 contained in Staff Exhibit 1.2?

20 A. Yes, they would be.

21 Q. Do you have any changes, corrections, or
22 additions to make to Staff Exhibit 1.2?

1 A. No.

2 Q. Did you not hear my last question or did
3 I lose your answer?

4 A. I guess you lost my answer. I said no.

5 MR. WEGING: Oh, okay. Thank you.

6 With that, Mr. Hearing Examiner, I would
7 move for the admission of Staff Exhibit 1.0 as
8 amended, Staff Exhibit 1.1, and 1.2 into the record
9 evidence, and I tender the witness for
10 cross-examination.

11 EXAMINER WOODS: Objections?

12 MR. BINNIG: No objection.

13 EXAMINER WOODS: The documents are admitted
14 without objection.

15 (Whereupon ICC Staff
16 Exhibits 1.0, 1.1, and 1.2
17 were received into
18 evidence.)

19 The witness is available for cross.

20 MR. BINNIG: Thank you, Your Honor.

21

22

1 CROSS EXAMINATION

2 BY MR. BINNIG:

3 Q. Good afternoon, Mr. Clausen.

4 A. Good afternoon.

5 Q. I have a few questions for you. First I
6 want to ask you a little bit about your background
7 and your work experience. You've never worked for
8 a telecommunications carrier. Is that correct?

9 A. No, I don't; I haven't.

10 Q. So that's correct. You've never worked
11 for --

12 A. That is correct.

13 Q. So you have never had responsibility for
14 engineering or designing a telecommunications
15 network. Is that correct?

16 A. That is correct.

17 Q. You've never had responsibility for
18 actually constructing or building a
19 telecommunications network. Is that correct?

20 A. That is correct.

21 Q. And you've also never had responsibility
22 for making investment decisions on behalf of a

1 telecommunications carrier. Is that correct?

2 A. That's correct.

3 Q. Okay.

4 A. Unfortunately.

5 Q. Is your only employment relating to the
6 world of telecommunications your employment with
7 the Illinois Commerce Commission?

8 A. That's correct.

9 Q. Let's turn to page 2 of your direct
10 testimony, and at lines 19 through 21 you state the
11 following, and I quote: "I recommend that
12 competitors have the right to choose their own line
13 cards, but that this be done without unduly
14 reducing Ameritech's incentive to roll out Project
15 Pronto in Illinois." Do you see that testimony?

16 A. I do.

17 Q. I want to ask you a hypothetical,
18 Mr. Clausen. I want you to assume that giving
19 CLECs the right to collocate their own line cards
20 would by itself unduly reduce Ameritech Illinois'
21 incentive to roll out Project Pronto in Illinois.
22 If that were the case, would you still recommend

1 that this Commission establish for CLECs a right to
2 collocate their own line cards in the Project
3 Pronto NGDLCs?

4 A. Obviously not. Otherwise I wouldn't
5 have written it this way. I think I make it clear
6 here that this be done without unduly reducing
7 Ameritech's incentive to roll out Project Pronto in
8 Illinois, so the question [sic] to your answer
9 [sic] is no, under that assumption of course.

10 Q. Okay. And now I want to ask you another
11 hypothetical making a slightly different
12 assumption, and I'm actually going to have a series
13 for you here. I want you to first assume that
14 giving CLECs the right to collocate such Project
15 Pronto NGDLC line cards would cause Ameritech
16 Illinois' cost to deploy Project Pronto facilities
17 to increase by 20 percent. If that were the case,
18 would you still recommend that the Commission
19 establish such a right for CLECs?

20 A. What do you mean by 20 percent? 20
21 percent overall? Just for what cost? What part of
22 the Project Pronto?

1 Q. Its cost to deploy Project Pronto in
2 Illinois would increase by 20 percent.

3 A. If I would still recommend --

4 Q. Would you still recommend that the
5 Commission create a right for CLECs to collocate
6 their own line cards in Project Pronto NGDLCs?

7 A. I wish we had such a number. If we
8 would have such a number, then I would also like to
9 have a number of the benefits CLECs would get from
10 having unbundled access, and then I would compare
11 those two numbers. So it's kind of unfair for me
12 to say yes or no to that question without having
13 either of those numbers, just having the assumption
14 of the 20 percent you just gave me.

15 Q. The only assumption -- and you can make
16 whatever assumption you want to make about
17 benefits. The only assumption I'm asking you to
18 make is that the cost to Ameritech Illinois to
19 deploy Project Pronto in Illinois would increase by
20 20 percent, and it's a hypothetical.

21 A. Yeah, but, see, it doesn't really matter
22 whether it's 5 percent, 6 percent, or 20 percent.

1 I think really what it boils down to is whether
2 that increase in cost really reduces Ameritech's
3 incentive to roll out Project Pronto. If 20
4 percent is enough for Ameritech to not even roll
5 out Project Pronto, then of course this Commission
6 would be concerned with the availability for
7 advanced services in Illinois, but if 20 percent is
8 still -- if a 20 percent increase in cost for
9 Ameritech is still a viable business opportunity
10 for Ameritech to go ahead with Project Pronto, then
11 20 percent is certainly not a threshold that this
12 Commission should be concerned about. So I think
13 it really boils down to what this 20 percent means
14 to Ameritech and what effect it would have on the
15 roll- out in Illinois.

16 Q. Okay. I want you to make another
17 assumption with me to help deal with that issue,
18 which is as follows: Assume that giving
19 competitors the right to collocate such line cards
20 would cause Ameritech Illinois' cost to deploy
21 Project Pronto in Illinois to increase by 20
22 percent. Let's also assume that that does not

1 cause Ameritech Illinois to end deployment of
2 Project Pronto in Illinois because it can recover
3 those costs, and this is an assumption now, that it
4 can pass on those costs to the CLECs who are
5 purchasing services, DSL services, on a wholesale
6 basis from Ameritech Illinois. Would you still
7 recommend in that instance that the Commission
8 create a right by CLECs to collocate their own line
9 cards in Project Pronto NGDLCs?

10 A. I certainly would because you just
11 assumed that that 20 percent increase that you
12 would be able -- Ameritech would be able to pass it
13 on to the wholesale customers, i.e., the CLECs. If
14 you make that assumption, I think that is probably
15 what this Commission should be concerned about,
16 whether those increases in costs will not only --
17 of course we have two different cases. In the
18 first case you assumed that Ameritech will bear
19 those costs. Is that correct?

20 Q. You couldn't answer that hypothetical so
21 I changed the hypothetical.

22 A. I just want to make sure --

1 Q. Their costs will increase by 20 percent,
2 but they're going to continue to roll out Project
3 Pronto because they can pass those costs on to the
4 CLECs purchasing wholesale DSL service.

5 A. But you don't make any assumption
6 whether or not they would still roll out Project
7 Pronto if they couldn't pass it on to CLECs. Is
8 that correct?

9 Q. That's a different question.

10 A. Okay, but I think it's important. But,
11 yeah, I think to answer the question, I think if
12 Ameritech is able to pass on those increases in
13 costs to the CLECs and CLECs still are able to
14 purchase those services from Ameritech Illinois and
15 then turn around and sell broadband services here
16 in Illinois, then the goal that this Commission
17 should be concerned with certainly is achieved, so
18 the answer is yes. I would recommend it.

19 Q. Well, let's add another assumption to my
20 hypothetical because I think you sort of hinted at
21 it in the answer you just gave. In addition to
22 assuming that Ameritech Illinois' cost to deploy

1 Project Pronto would increase by 20 percent in
2 Illinois, and in addition to assuming that
3 Ameritech Illinois continues to deploy Project
4 Pronto because it can pass those costs on to the
5 CLECs purchasing DSL service, I want you to also
6 assume that the only way that CLECs can -- the only
7 way those costs can be passed on to the CLECs is if
8 the CLECs actually purchase the service because the
9 CLECs in turn can pass that cost on to end users.

10 A. Uh-huh.

11 Q. So the price to the end user for the
12 retail DSL service increases by 20 percent. If
13 that were the case, would you still recommend that
14 the Commission create a right for CLECs to
15 collocate their own line cards in Project Pronto
16 NGDLCs?

17 A. Yes, I would.

18 Q. Okay. Is there any particular
19 percentage under that last hypothetical that were
20 we to reach it, say 100 percent, 200 percent, where
21 your recommendation would change?

22 A. No, no. A --

1 Q. That answers my question, Mr. Clausen.

2 A. Okay. Okay.

3 Q. Now let's assume that giving competitors
4 the right to collocate their own line cards in
5 Project Pronto NGDLCs would cause Ameritech
6 Illinois' provisioning intervals to the CLECs of
7 the wholesale service and, in turn, the CLECs'
8 provisioning intervals of the service to end users
9 to increase and to increase by 20 percent, so we've
10 got longer provisioning intervals now.

11 A. Uh-huh.

12 Q. If that were to occur, would you still
13 recommend that the Commission establish a right by
14 CLECs to collocate their own line cards in Project
15 Pronto NGDLCs?

16 A. And you're talking about provisioning
17 intervals using Ameritech's wholesale Broadband
18 Service Offering?

19 Q. I'm talking about the provisioning
20 intervals -- we're talking about a right to
21 collocate line cards by CLECs. I'm talking about
22 the provisioning intervals that would apply to

1 provisioning that to CLECs and CLECs, in turn,
2 provisioning their retail service to end users.

3 A. Yes.

4 Q. Okay. If those provisioning intervals
5 increased by 20 percent.

6 A. Yeah. It sounds like you're implying
7 that all other CLEC offerings stop at that point
8 and they just wait for Ameritech to turn around and
9 give them the wholesale Broadband Service.

10 EXAMINER WOODS: No. I don't think he
11 understands the question. I don't think broadband
12 -- the broadband tariff service has nothing do with
13 this question. Is that correct?

14 MR. BINNIG: That's correct.

15 EXAMINER WOODS: We're talking strictly about
16 provisioning the line card at the terminal for the
17 CLEC so they can basically provide whatever kind of
18 DSL service they want. This has nothing to do with
19 the Broadband Service, as I understand the
20 question. The Broadband Service continues. If the
21 CLEC wants to do ADSL or whatever other has been
22 offered on the Broadband Service, that stays in

1 place. This is strictly a company-by-company,
2 card-by-card provisioning interval question.
3 That's what's increasing. The Broadband Service is
4 immaterial to this question.

5 MR. BROWN: I'm sorry. Increasing over what?
6 What are you comparing to it?

7 EXAMINER WOODS: Base line.

8 MR. BROWN: And what is the base line?

9 MR. BINNIG: We can make the base line
10 whatever you want to make it, but let's make the
11 base line the Broadband Service. We're not
12 affecting the Broadband Service intervals, but
13 we're talking about the intervals for this new
14 unbundling option being 20 percent greater than the
15 Broadband Service intervals both on the wholesale
16 side and on the retail side.

17 A. Okay. Assuming I understand the
18 question correctly now, you're talking about
19 wholesale and retail you just said.

20 Q. The end result here is that end users
21 who want to purchase DSL services through the
22 unbundling option, okay, the provisioning intervals

1 are longer.

2 A. You're saying if 20 percent is -- if I
3 would still recommend it if it increases by 20
4 percent.

5 Q. Yes.

6 A. I think I would, yes.

7 Q. Okay. Is there any particular
8 percentage that the provisioning intervals would
9 have to increase for your recommendation to change?
10 So if the interval increased by 100 percent or 200
11 percent, would your recommendation change?

12 A. I assume there's a specific threshold,
13 but I don't think I can give you a specific number
14 sitting right here.

15 Q. So you haven't -- as you sit here today,
16 you haven't thought about what specific threshold
17 --

18 A. Threshold, certainly not.

19 Q. Let's turn to page 3 of your testimony,
20 and at lines 5 through 8, you assert there that the
21 Commission should prevent ILECs like Ameritech from
22 designing an inflexible network architecture that

1 locks competitors into a specific technology. Do
2 you see that?

3 A. I do.

4 Q. And that's actually lines 5 through 6.

5 A. Uh-huh.

6 Q. You would agree with me, wouldn't you,
7 Mr. Clausen, that the Commission doesn't have any
8 fiduciary duties to shareholders?

9 A. Who doesn't? The Commission?

10 Q. The Commission does not have any
11 fiduciary duties to shareholders. Is that correct?

12 A. I think that's correct, yeah.

13 Q. Do you also agree with me that the
14 Commission doesn't have to compete for capital in
15 the capital markets?

16 A. That's right.

17 Q. The Commission also doesn't have any
18 investments on which shareholders require it to
19 generate a return. Isn't that correct?

20 MR. WEGING: Counsel, I'm going to object to
21 this line of questioning. I don't know the fact
22 that this is a regulatory body that doesn't act

1 like a corporation in private industry has any
2 relevance either to the testimony being questioned
3 about or anything else. I think I'm going to
4 object to the line of questioning.

5 MR. BINNIG: Well, if I need to respond, I
6 would say it is relevant to the issue of whether
7 the Commission should be dictating particular types
8 of network configurations for deployments.

9 EXAMINER WOODS: Why?

10 MR. WEGING: Well, I don't think -- I don't
11 think the issue of the Commission's authority as a
12 regulatory body really is somehow tied to the fact
13 that we do or do not have to go to the market to
14 get money to build things.

15 MR. BINNIG: I'm not talking about the
16 Commission's authority. I'm talking about -- it
17 was a different issue. I'm talking about its
18 policy choices.

19 EXAMINER WOODS: Well, I think maybe you might
20 want to recast those questions in terms of if the
21 Commission were to follow these recommendations,
22 does he realize that that might impact the

1 company's positions vis-a-vis its shareholders in
2 the capital markets. That I think is essentially
3 what you're getting at I believe.

4 MR. WEGING: Yeah. It isn't so much the
5 question about Mr. Clausen's policy choices, but
6 that the Commission is somehow involved.

7 MR. BINNIG: I can do that.

8 EXAMINER WOODS: Thanks.

9 MR. BINNIG:

10 Q. Mr. Clausen, would you agree that if the
11 Commission were to create in CLECs a right to
12 collocate line cards in Project Pronto NGDLCs, that
13 that could have an impact on Ameritech Illinois'
14 ability to generate a return on its Project Pronto
15 investment?

16 A. That's correct.

17 Q. Would you also agree that if the
18 Commission were to create such a right, that could
19 have an impact on the investment risk that
20 Ameritech Illinois bears as to whether or not its
21 deployment of particular facilities including
22 Project Pronto become obsolete?

1 A. I would agree with that.

2 Q. And so it could have an impact on the
3 risk that that investment would become stranded.

4 A. Yes.

5 Q. Let's go to page 4 of your direct
6 testimony, lines 11 through 12, and you begin your
7 answer here by asserting that in a traditional line
8 sharing environment, CLECs have the ability to
9 offer all desired variations of xDSL services that
10 can share the line with voice services. Do you see
11 that?

12 A. Are you at the end? Oh, okay. I see it
13 now.

14 Q. It carries over to page 5, line 1.

15 A. Uh-huh.

16 Q. Do you see that?

17 A. Yes.

18 Q. Would you agree with me that currently
19 the only types of xDSL services, and we're talking
20 about the traditional line sharing environment that
21 we referred to, which is where copper is deployed
22 all the way from the NID to the CO, the only

1 variation of xDSL services today that can share
2 that copper loop with voice services is -- there's
3 basically two, ADSL and G.Lite?

4 A. Yeah, if you don't consider G.Lite a
5 subset of ADSL.

6 Q. If you don't consider G.Lite a subset of
7 ADSL.

8 A. Yeah, that's right.

9 Q. Otherwise there's just one, ADSL.

10 A. Yeah. ADSL is probably a broader term,
11 yeah. There are probably different variations of
12 ADSL, different speed combinations. As we have
13 seen in the Project Pronto architecture, we get
14 into ATM quality of service levels that can differ,
15 but right now as of today in terms of xDSL, ADSL,
16 this is the only one that line sharing is working
17 with.

18 Q. And other types of DSL technologies that
19 exist today, like SDSL and HDSL, those require use
20 of a complete stand-alone copper loop. Isn't that
21 correct?

22 A. Yes, as of today, yes.

1 Q. Now let's go to your testimony,
2 continuing in this answer on page 5 at lines 7
3 through 9. You state that if CLECs do not have the
4 ability to specify the line cards at the remote
5 terminal, they do not have the same options as in a
6 traditional line sharing situation. Do you see
7 that?

8 A. Uh-huh.

9 Q. I want to explore that assertion a
10 little bit. Let's assume a network where there has
11 been no deployment of Project Pronto. Okay? I
12 think, as you've already acknowledged, the only
13 type of line sharing that would be available in
14 that network would be, as we sit here today, ADSL
15 service. Is that right?

16 A. That's right.

17 Q. Okay. Now let's overlay Project Pronto
18 facilities on to that existing copper network.
19 Okay?

20 A. Okay.

21 Q. If we do that, you still have the
22 ability to provide ADSL service over the copper

1 loops that already existed in the network, don't
2 you?

3 A. Yes, assuming it is ADSL deployable in
4 that area.

5 Q. But if ADSL were not deployable, and I
6 think what you're getting at is situations where,
7 for example, loops are greater than 18,000
8 feet?

9 A. For example.

10 Q. Or where a First Generation DLC existed?
11 Okay. If ADSL were deployable, that would apply
12 equally both in the case where there were no
13 Project Pronto and where there were a Project
14 Pronto overlay. Isn't that right?

15 A. That's correct.

16 Q. So the options that you have in the
17 traditional line sharing situation continue to
18 exist once Project Pronto is overlaid on the
19 network. Isn't that right?

20 A. Yeah, I think I would agree with that,
21 yeah.

22 Q. Okay. Could you go back to page 4 for a

1 second?

2 A. Sure.

3 Q. Again, still in the direct testimony.

4 At lines 11 through 12 you state that a CLEC's
5 ability to differentiate its services from those of
6 the incumbent is vital to its success. Do you see
7 that?

8 A. Yes.

9 Q. Now in making that assertion, you
10 haven't performed any market studies or any
11 empirical studies of end users that addresses what
12 value, if any, those end users place on service
13 differentiation [sic], have you?

14 A. No, I haven't. The only example that
15 comes to mind is the resale option that is
16 currently available in the voice environment is
17 probably providing an example that resale in that
18 environment did not prove to be a viable entry
19 strategy, and that's probably part of the reason
20 why --

21 Q. Specific to advanced services now, you
22 haven't done any type of market analysis or

1 empirical analysis of end users in terms of what,
2 if any, service differentiations [sic] they would
3 find valuable.

4 A. No, I haven't.

5 Q. And you also haven't done any type of
6 market analysis along those lines specifically for
7 DSL services. Is that right?

8 A. No, I haven't.

9 Q. So is that correct?

10 A. That is correct.

11 Q. Now are you aware -- I assume that
12 you're familiar with the Project Pronto Order that
13 the FCC issued, but we generically refer to the
14 Project Pronto Order. I think the official title
15 is the Second Memorandum Opinion and Order in CC
16 Docket 98-141? Are you familiar with that?

17 A. I am.

18 Q. Okay. Now you don't have a copy of that
19 with you up there, do you?

20 A. Not right here, no.

21 (Whereupon said document
22 was provided to the witness

1 by Mr. Binnig.)

2 Do I get to read now?

3 Q. Hopefully I'm not going to have you read
4 anything out of this, Mr. Clausen.

5 A. Too bad.

6 Q. I'll try to keep it short.

7 I'd like to refer you to footnote 82,
8 and just let me ask you, are you generally aware
9 that in paragraph 28 the FCC did conclude that the
10 SBC/Ameritech Broadband Service Offering does give
11 CLECs the ability to differentiate their products
12 from those of AADS?

13 A. Yes. I see that.

14 Q. Okay. Now in footnote 82, does that
15 footnote describe what's referred to as a
16 provisioning system known as SOLID, S-O-L-I-D? Do
17 you see that?

18 A. Yes, I do.

19 Q. And the SOLID process includes what SBC
20 refers to as the building of a profile? Do you see
21 that?

22 A. Yes.

1 Q. And then describes a carrier's profile
2 consists of several factors, including upstream
3 speed, downstream speed, aggregate power, and
4 noise? Do you see that?

5 A. I do.

6 Q. Just focusing on the speed combinations,
7 are you aware, Mr. Clausen, that under the SOLID
8 provisioning system that there are almost 3 million
9 different possible speed options that a CLEC could
10 designate?

11 A. I did not know that specific number, no.

12 Q. Okay. Are you aware that under the
13 SOLID profile system that any CLEC can designate
14 upstream and downstream, both maximum and minimum
15 speeds, in increments of 32 kilobytes?

16 A. I did not know that.

17 Q. If that were the case, would you agree
18 with me that the Broadband Service Offering would,
19 in fact, enable CLECs to differentiate their
20 service offerings from those of AADS?

21 A. That doesn't change anything with
22 respect to the ATM quality of service level. It's

1 still all UBR, unspecified bit rate, and speeds can
2 vary, but it doesn't -- obviously it didn't
3 alleviate the concerns the CLECs were having with
4 this. Otherwise we wouldn't be talking about this.

5 Q. And you are aware -- I believe Ms.
6 Carter was asked a question about this, and I won't
7 have you do the same thing she did, but you are
8 aware, are you not, that one of the commitments
9 that the FCC made a condition to the Project Pronto
10 Order in section 4 of Appendix A is a commitment
11 and now a condition that SBC develop a CBR product?

12 A. Yes, I'm aware.

13 EXAMINER WOODS: What does CBR mean?

14 MR. BINNIG: Constant bit rate quality of
15 service.

16 Q. I now want to -- we have been spending a
17 lot of time in the land of hypotheticals. I want
18 to stay there for at least one or two more.

19 I want to ask you a question in terms of
20 just general economic theory, Mr. Clausen. Would
21 you agree with me that in a commodity market where
22 there are numerous competitors, okay, and what

1 those competitors are selling is a commodity, they
2 are interchangeable, that there tend to be two main
3 ways that a competitor can differentiate its
4 product? One is through price?

5 A. Correct.

6 Q. And the other is through what I would
7 call customer service?

8 A. Correct.

9 Q. Why don't we go to page 7 of your direct
10 testimony. At lines 3 through 5, you assert there
11 that you believe the Commission should declare the
12 fiber portion between the NGDLC RT and the optical
13 concentration device ("OCD") at the central office
14 an unbundled network element. Do you see that?

15 A. Yes, I do.

16 Q. If the Commission were to accept your
17 recommendation here, how would a CLEC access the
18 fiber UNE at the OCD?

19 A. It is my understanding that currently
20 Ameritech or SBC is planning on cross-connecting on
21 the leased port on the OCD to a CLEC's collocation
22 cage in that central office, so for this I assume

1 this will stay in place. That's the way of
2 connecting the CLEC's network with Ameritech's OCD.

3 Q. Mr. Clausen, isn't it true that that
4 cross-connect occurs after the signal has passed
5 through the OCD?

6 A. That's what it is, yes.

7 Q. And so are you proposing that the OCD
8 also be unbundled as a UNE?

9 A. I am not necessarily a technical
10 witness, but I don't think it has to be declared as
11 a UNE.

12 Q. Well, in fact, isn't the OCD an ATM
13 packet switch?

14 A. That's my understanding, yes.

15 Q. So I guess I'm at a bit of a loss,
16 Mr. Clausen. If you're going to unbundle just the
17 fiber, how do you give a CLEC access to that fiber
18 prior to it entering the OCD?

19 A. But I thought Ameritech's or SBC's
20 offering was to offer those OCD ports and the
21 cross- connection to a CLEC's collocation cage
22 anyway, so I didn't see a need -- I don't see a

1 need why to declare that as an additional UNE.

2 Q. Well, Ameritech's offering is not a UNE
3 offering though, is it?

4 A. Not right now, no.

5 Q. Okay.

6 A. But on this same issue, what I thought
7 was interesting to note that also in the Project
8 Pronto Order, although the FCC granted a waiver for
9 SBC's ILECs to own the OCD and the digital line
10 cards at the RT, they also specified that CLECs
11 should have the ability to install their own OCDs
12 at the central office, and I think this might be an
13 indication that they see the option for CLECs to
14 install their own OCDs, and then they can access
15 that fiber portion direct.

16 Q. Do you still have the copy of the
17 Project Pronto Order? Can you identify for me
18 specifically where you're referring to?

19 A. I certainly don't. I would have to look
20 it up.

21 MR. BINNIG: I would just make that an
22 on-the-record data request.

1 A. Okay.

2 MR. BINNIG: If he could identify the specific
3 paragraph at some point that he's referring to.

4 A. I will.

5 Q. Okay. Let's go to page 8 of your direct
6 testimony.

7 A. Okay.

8 Q. And I want to refer to your answer at
9 lines 15 through 17 where you're talking about the
10 alternatives available to CLECs seeking to provide
11 data services in a Project Pronto environment, and
12 one of the alternatives you're talking about is
13 collocating at the RT and purchasing dark fiber
14 from Ameritech or purchasing fiber capacity from a
15 third party, and then you state at lines 15 through
16 17 that, however, as SBC itself acknowledges, and
17 you quote, "operational and administrative
18 obstacles, particularly the lack of space in remote
19 terminals" often make collocation at the RT
20 impossible, and you don't indicate where this quote
21 is from, but.

22 A. Yeah.

1 Q. Isn't this quote, in fact, from the
2 February 2000 waiver request that SBC first filed
3 with the FCC?

4 A. I believe it is, yes.

5 Q. Okay. Hasn't there been a lot of
6 activity at the FCC since that letter was sent to
7 the FCC on this issue?

8 A. Has there been activity at the FCC? I'm
9 sure, yeah.

10 Q. Okay. And one of the end results of
11 that activity has been the Project Pronto Order.
12 Isn't that right?

13 A. That's correct.

14 Q. And doesn't the Project Pronto Order
15 have a specific condition that relates to access to
16 remote terminals by CLECs for collocation?

17 A. That's correct.

18 Q. And what it says is that for existing
19 remote terminals, SBC ILECs are required to create
20 what's called a special construction arrangement to
21 enable CLECs to collocate at remote terminals.
22 Isn't that correct?

1 A. That's correct.

2 Q. So this particular reference here would
3 you agree with me is outdated, your reference at
4 lines 15 through 17?

5 A. Well, it is certainly still the case
6 today. I don't think that changed overnight.
7 Certainly the requirement for Ameritech or SBC's
8 ILECs to create additional space certainly came
9 after that. That's correct.

10 Q. Let's go now to page 9, and here you're
11 talking about another alternative, beginning at
12 line 1, which is using all-copper loops. Do you
13 see that?

14 A. Yes.

15 Q. And beginning on line 2, you assert that
16 in areas where Ameritech initially served
17 communities by an old fiber-fed DLC architecture,
18 however, spare copper loops connecting the RT with
19 the CO are typically unavailable. Do you see that?

20 A. Yes.

21 Q. Now you haven't done any physical
22 inventory of Ameritech Illinois' loop network. Is

1 that correct?

2 A. No. I think that's one of the desires
3 of the CLECs, having the -- to get an inventory of
4 the ILEC's network as far as loop length and other
5 impediments to the deployment of advanced services.

6 Q. Okay. I want to focus now on the
7 particular issue we're dealing with, which is the
8 collocation of line card issue. Okay?

9 A. Sure.

10 Q. Isn't it correct as you sit here today,
11 Mr. Clausen, that you can't identify where in
12 Ameritech Illinois' service territory it deployed
13 "old fiber-fed DLC architecture"?

14 A. No.

15 Q. So that's correct.

16 A. That's correct.

17 Q. And you also can't identify in instances
18 where Ameritech Illinois may have deployed such
19 architecture, how many -- and this is the old
20 fiber-fed DLC architecture, how many end users are
21 served by that architecture. Is that correct?

22 A. That's correct.

1 Q. And you also can't identify in those
2 areas how much copper loop might be deployed in
3 those areas as well. Is that correct?

4 A. I cannot. Yes, that's correct.

5 Q. And I take it your answers would be the
6 same if I asked you about loop lengths; that in any
7 particular area of Ameritech Illinois' network, you
8 can't identify what percentage of copper loops are
9 a certain length. Is that correct?

10 A. That's correct. Again, I think a lot of
11 parties would like to have that information, yes.

12 Q. Okay. Let's go to your surrebuttal
13 testimony.

14 A. Are we skipping my rebuttal?

15 Q. We're skipping your rebuttal.

16 A. We're moving.

17 Q. And I'd like you to turn to page 2 of
18 your surrebuttal, and focusing on line 12 through
19 line 16, there's a question that begins: "Mr. Lube
20 states that it would be 'inappropriate for this
21 Commission to mandate the deployment of a
22 particular type of technology or manufacturer of

1 any type of technology'. Do you agree?" Then your
2 answer is: "Yes, although no party in this
3 proceeding recommended the Commission make such a
4 mandate." Do you see that?

5 A. Yes, I do.

6 Q. Do you also agree that it would be
7 inappropriate for any particular CLEC or group of
8 CLECs to mandate the deployment of a particular
9 type of technology or manufacturer of any type of
10 technology by an incumbent LEC?

11 A. Sure. I would agree.

12 Q. Now let's go to page 3 of your
13 surrebuttal, and at lines 1 through 4 you assert
14 there that it is your understanding that no party
15 is asking Ameritech to provide a superior network
16 for CLECs. All Covad and Rhythms are seeking is
17 unbundled access to Project Pronto and competitive
18 ownership of line cards. Do you see that?

19 A. I do.

20 Q. Now, going off into the world of
21 hypotheticals for a moment again, Mr. Clausen,
22 let's assume that if the Commission were to give

1 Rhythms and Covad the right to collocate their own
2 line cards in Project Pronto NGDLCs, that as a
3 result of that Ameritech Illinois would have to
4 change its planned configuration and deployment of
5 Project Pronto and would have to add additional
6 facilities for one of two reasons; either the
7 network was going to be used less efficiency than
8 Ameritech Illinois otherwise planned, or the
9 network was going to require more bandwidth than
10 Ameritech Illinois otherwise planned. Okay? Are
11 you with me so far? These are all assumptions I'm
12 making.

13 A. They're all assumptions. Okay. I'm
14 with you.

15 Q. If either one of those were to result
16 from a Commission creation of a right by CLECs to
17 collocate in Project Pronto NGDLC line cards,
18 wouldn't that, in fact, be forcing Ameritech
19 Illinois to build a superior network for the CLECs?

20 A. Why would that be a superior network? I
21 think that's the part I don't understand, why that
22 came up in that testimony, why that would be a

1 superior network.

2 Q. Well, they would have to add additional
3 facilities that they weren't planning on otherwise
4 deploying.

5 A. By additional facilities, you're talking
6 about increasing bandwidth. Is that correct?

7 Q. I'm talking about increasing bandwidth
8 and increasing capacity, whether it be through wave
9 division multiplexing, dense wave division
10 multiplexing, or whether it be through essentially
11 the duplication of the Project Pronto network.
12 That is instead of putting in one OCD in a central
13 office, you have to put in three or four or five.
14 Instead of putting in three channel bank assemblies
15 in an RT, you have to put in six or seven or eight.
16 Okay? In any of those instances, if Ameritech
17 Illinois had to deploy additional equipment, had to
18 go out and purchase and install additional
19 equipment beyond what it was otherwise planning to
20 purchase and install, wouldn't that be creating a
21 superior network for CLECs?

22 MR. BROWN: I would object to the extent he's

1 calling for a legal conclusion.

2 EXAMINER WOODS: Overruled.

3 A. I don't see why that would be a superior
4 network. I see that as a network that leaves more
5 options for CLECs, and by increasing bandwidth
6 either through wave length division multiplexing or
7 adding additional strands of fiber, it increases
8 the capacity, but the technology doesn't change,
9 and it doesn't go to a superior network. I think I
10 have a problem with characterizing that as a
11 superior network, and even if it were a superior
12 network, I'm troubled by the fact that Ameritech
13 does not want to offer that because obviously there
14 seems to be a demand from the CLEC community to get
15 those additional capabilities and those increased
16 bandwidths, and they're certainly willing to pay an
17 additional premium for that, that additional
18 capability or that additional bandwidth.

19 Q. But you seem to be talking about a
20 competitive market where the price is one that's
21 not regulated, but one that's determined
22 voluntarily between a seller and a buyer.

1 Let me ask the question this way.
2 Wouldn't you agree, Mr. Clausen, that Ameritech
3 Illinois might not choose to deploy the additional
4 facilities I'm talking about that you don't call
5 superior network, but it might not choose to do
6 that because regulatory requirements or other
7 requirements might make it an unattractive business
8 decision in terms of generating revenues sufficient
9 to earn a return on its investment?

10 A. So are you saying that there could be
11 two ways? There could be one where Ameritech
12 offers those additional capabilities or these
13 additional bandwidths on its own, and then there's
14 one other way where it will be forced by the
15 Commission that would be a different
16 implementation? Is that what you're saying?

17 Q. No. Let me try it again, and maybe the
18 best way to do this is to read back his answer to
19 my question just preceding this one. What I'm
20 trying to get at is that you indicated that once
21 you I think explained what you envision as a
22 superior network, and if I understand you

1 correctly, you're defining superior network as one
2 that's more technologically advanced than the
3 Project Pronto Network? Is that fair?

4 A. I think that's fair, yeah.

5 Q. And you said that you would be troubled
6 if Ameritech Illinois were reluctant to deploy such
7 a network, that is a more technologically advanced
8 network. Isn't it possible that Ameritech Illinois
9 might find it unattractive to deploy a more
10 technologically advanced network if it were
11 prevented from earning a reasonable return on its
12 investment in that network?

13 A. Yeah, I certainly would agree with that,
14 but that's probably the case for all the UNE
15 offerings. I don't think there's anything new
16 that's coming up here.

17 Q. I guess the only other question I have,
18 Mr. Clausen, is in either the case of your
19 definition of a superior network, that is a more
20 technically advanced network.

21 A. Okay.

22 Q. In either that case or in the case where

1 Ameritech Illinois were required to purchase and
2 install additional facilities, okay? In either of
3 those cases, it's Ameritech Illinois who bears the
4 risk that its investment will be stranded. Do you
5 agree with that?

6 A. I guess that depends on the
7 implementation, how that requirement is carried
8 out.

9 Q. Okay. Well, let's take the UNE
10 implementation that I think you're advocating.
11 Isn't it true that in the world of UNEs, it's the
12 incumbent who bears the investment risk?

13 A. Generally speaking, yeah, that's
14 correct.

15 Q. A CLEC can lease a UNE one month and the
16 next month can say I don't want this UNE anymore.
17 Isn't that correct?

18 A. That's correct, but you seem to be
19 implying that you're offering something completely
20 new as a UNE. The fact is we are just declaring it
21 a UNE. It's already there. The fiber portion
22 between the RT and the OCD is already there. It's

1 not like you have to physically create that UNE.
2 It's already there. It's just a question of how
3 competitors have access to that UNE.

4 Q. Well, it's only there where Project
5 Pronto has actually been deployed. Is that right?

6 A. Sure.

7 Q. Okay. And also, if one of the results
8 of that requirement is that additional fiber would
9 have to be deployed, that fiber doesn't exist there
10 today either, does it?

11 A. It depends. Certainly not in all
12 circumstances, but I'm sure there's spare capacity
13 in many situations where Project Pronto is being
14 deployed. I just cannot imagine a brand-new
15 network being deployed to full capacity from the
16 get-go.

17 Q. Let's assume -- I'll take away all those
18 concerns. Let's assume that you would have to
19 deploy additional fiber.

20 A. Yeah.

21 Q. If the UNE requirement were imposed by
22 the Commission, and you would have to deploy

1 additional Project Pronto facilities in the central
2 office in terms of additional OCDs and additional
3 facilities in the RT as well.

4 A. Uh-huh.

5 Q. In a UNE world, it's Ameritech Illinois
6 who bears the risk of those investments. Correct?

7 A. That's correct, and it is Ameritech
8 Illinois that gets a TELRIC return for that, which
9 has return on investment calculated into it, which
10 is the case for any other UNE.

11 Q. Once again, I want to be clear for the
12 record, Mr. Clausen. Those CLECs can decide not to
13 purchase those UNEs at any time. Is that correct?

14 A. That's correct. If they don't want to
15 purchase those UNEs, then I don't know why they
16 want it now.

17 Q. I think one more question, and, again,
18 this is a hypothetical, and you may or may not be
19 able to answer this. If you don't know, you don't
20 know, but I want you to assume that as part of the
21 Project Pronto deployment, Ameritech Illinois
22 deploys an OC12 SONET ring. Okay? And over that

1 -- okay. Take away the Project Pronto piece of it.
2 Let's just assume that Ameritech Illinois has an
3 OC12 SONET ring that it has deployed in its
4 network. Okay?

5 A. Okay.

6 Q. And currently today CLECs can obtain on
7 that SONET ring OC3 capacity.

8 A. Okay.

9 Q. Okay? And so what they're getting is a
10 smaller piece of bandwidth on the OC12.

11 A. Okay. Uh-huh.

12 Q. Now let's assume that the Commission
13 creates a right for CLECs to get at their desire
14 OC12 capacity.

15 A. Okay.

16 Q. Okay? On this particular SONET ring.
17 Isn't it correct that what Ameritech Illinois would
18 have to do would be to build a higher capacity
19 SONET ring than the OC12? That is maybe an OC48 or
20 an OC96 SONET ring?

21 A. That is correct, and they would be
22 compensated for that build-out as they would be

1 compensated for any more selling of OC3s out of
2 OC12s.

3 Q. And I take it you don't view that as
4 requiring Ameritech to build a superior network.

5 A. No, I don't.

6 MR. BINNIG: That's all I have for the moment,
7 Your Honor.

8 EXAMINER WOODS: Okay.

9 MR. BROWN: Thank you.

10 EXAMINER WOODS: How long are we going to go,
11 Mr. Brown? Let's go off the record just a minute.

12 (Whereupon at this point in
13 the proceedings an
14 off-the-record discussion
15 transpired.)

16 CROSS EXAMINATION

17 BY MR. BROWN:

18 Q. Good afternoon, Mr. Clausen.

19 A. Good afternoon.

20 Q. I'm Craig Brown representing Rhythms.

21 Mr. Clausen, have you read all of the
22 testimony that was filed in this case?

1 A. In this case in the rehearing?

2 Q. Yes.

3 A. Or the whole case?

4 Q. Yes.

5 A. Yes, I have.

6 Q. So you've read all of Ameritech's
7 testimony that has been filed here in this case?

8 A. Yes.

9 Q. So you've read it, understand the
10 concerns that they've expressed in their testimony
11 with regard to unbundling Project Pronto and giving
12 access to line cards to CLECs?

13 A. At least I hope I did.

14 Q. And after reading that, you still
15 recommend that the Commission require Ameritech to
16 unbundle Project Pronto and provide access to the
17 line cards to CLECs. Correct?

18 MR. BINNIG: I'm going to impose an objection
19 now. I may be posing it repeatedly, but I object
20 to this as not being proper cross. This is
21 friendly cross.

22 EXAMINER WOODS: Are we going somewhere with

1 this? It's actually cross.

2 MR. BROWN: I'm sorry?

3 EXAMINER WOODS: Are we going somewhere with
4 this? This is actually cross-examination.

5 MR. BROWN: No, that's the -- I mean I'm --

6 EXAMINER WOODS: So you're just going to ask
7 him to reiterate his opinions that are in your
8 favor?

9 MR. BROWN: No, no.

10 EXAMINER WOODS: Okay. You can go a little
11 while, but I would expect some type of adversarial
12 process.

13 MR. BROWN: Okay.

14 Q. Mr. Clausen, you would agree that the
15 Broadband Service -- you state in your testimony
16 that the Broadband Service has been designed for
17 the services that AADS intends to offer. Correct?

18 A. Correct.

19 Q. And, for example, the Broadband Service
20 currently would allow CLECs to provide only ADSL
21 and not other types of DSL. Correct?

22 A. That's correct, yeah.

1 Q. And CLECs frequently have different
2 business plans. Correct? They may be providing
3 services to different types of customers and that
4 demand different types of services?

5 A. That is correct.

6 Q. And in its testimony Ameritech states
7 that there are a number of alternatives to the
8 Broadband Service that CLECs can take advantage of,
9 such as spare loops, using spare loops, and
10 collocating DSLAMs at the remote terminal.

11 MR. BINNIG: I'm going to object again.

12 EXAMINER WOODS: Mr. Brown, we've got to go
13 somewhere with this, my friend. This is just pure
14 friendly cross. You've got to ask him a question
15 that's adverse to his testimony.

16 MR. BROWN: I am.

17 EXAMINER WOODS: No, you're not.

18 MR. BROWN: I'm just setting up a foundation.

19 EXAMINER WOODS: No, sir, you're not. If you
20 have a question to ask him that's
21 cross-examination, please do it. So far all you've
22 done is elicit responses in favor of your client.

1 That's not cross.

2 MR. BROWN:

3 Q. In your direct testimony you propose
4 that Ameritech and CLECs engage in a collaborative
5 process to work out any issues regarding
6 implementation?

7 A. That's what I propose, yes.

8 Q. And you recommend that the Commission
9 establish a specific deadline, and specifically
10 you're proposing a nine-month deadline to end that
11 collaborative process?

12 A. Yes, and the reason I do that is that I
13 think there should be -- there should be a definite
14 date when those collaboratives should at least, in
15 part, succeed what they're intended for, meaning
16 that in my proposal the Commission should order
17 that CLECs do have the right to specify the line
18 cards at the RT, but that this not happen
19 overnight, so to speak, but in a nine-month date
20 from now so that these administrative problems and
21 obstacles can be worked out in a collaborative
22 fashion before that right to collocate will

1 actually be exercised.

2 Q. And would you agree that any processes
3 that are established in that collaborative should
4 apply to Ameritech's affiliate as well as to CLECs?
5 In other words, that if a process for collocation
6 is developed in the collaborative process, that
7 AADS should have to go through that process as well
8 in order to provide services over Project Pronto?

9 A. In other words, should every CLEC be
10 required to follow those standards that come out of
11 that collaborative?

12 Q. Correct.

13 A. I think I would agree, yes.

14 Q. And this is necessary -- it is necessary
15 to require AADS to use those same processes just
16 for purposes of ensuring nondiscrimination.
17 Correct? That Ameritech is not favoring its
18 affiliate?

19 A. Well, to be honest, I'm not really
20 concerned with the parity there between AADS and
21 other CLECs with respect to those standards because
22 it's my understanding right now that AADS does not

1 necessarily have the desire to even go into these
2 collaboratives or even have unbundled access for
3 reasons I don't want to speculate on, but that is
4 certainly not my concern at that time that AADS has
5 the same access to Project Pronto as other CLECs
6 are pursuing. If AADS is after that process --
7 after the collaborative, after the right to
8 exercise -- after the fact that CLECs do have the
9 right to specify or own their own line card, if
10 AADS is still satisfied with the way they are
11 getting service from Ameritech or Ameritech
12 Illinois, from the incumbent, then I don't see any
13 problem with AADS continuing its business
14 relationship with its parent or incumbent LEC.
15 That really is -- I don't think that really is a
16 concern.

17 MR. BROWN: I have no further questions.

18 EXAMINER WOODS: Counsel?

19 MR. BINNIG: I think --

20 MS. HIGHTMAN: Well, wait, wait.

21 MR. BINNIG: I think we've got to wait for

22 Mr. Weging to see if --

1 MS. HIGHTMAN: I'm not sure why they're
2 entitled -- they only ought to be entitled to do
3 more cross if the Staff attorney does redirect.

4 MR. BINNIG: Thank you, Carrie.

5 MS. HIGHTMAN: So I'm not sure why we're
6 turning to --

7 EXAMINER WOODS: I always give everybody the
8 opportunity to do additional cross before redirect.
9 It's standard policy. In case somebody else's
10 cross raised an issue for an attorney --
11 (interrupted)

12 MS. HIGHTMAN: Well, I think it's precisely
13 what Mr. Brown was trying to do with his questions
14 based on the cross of Mr. Binnig of Mr. Clausen.

15 EXAMINER WOODS: No. All he was doing was
16 arguing on brief that Staff agrees with his client.

17 MS. HIGHTMAN: That's not --

18 EXAMINER WOODS: I'm not going to hear any
19 more argument on that. I've always given attorneys
20 the opportunity to do additional cross until
21 everybody is done with the first round of cross and
22 then follow it up with redirect and recross.

1 That's always been the way I've conducted these
2 hearings. I'm not going to stop now.

3 Mr. Binnig.

4 MR. BINNIG: I do have one question. I just
5 want to make sure the record is clear what
6 Mr. Brown just asked you.

7 CROSS EXAMINATION

8 BY MR. BINNIG:

9 Q. If the Commission were to adopt your
10 recommendation and create this line card
11 collocation right for CLECs and, in addition,
12 impose the collaborative requirement in the
13 nine-month period before the right could be
14 exercised, is it your testimony that if AADS wants
15 to avail itself of whatever business rules or
16 methods and procedures come out of that
17 collaborative process, that AADS can or should be
18 able to use those methods and procedures, but if it
19 doesn't want to and wants to continue buying the
20 Broadband Service, it should be allowed to do that
21 as well?

22 A. That is exactly what I was saying.

1 EXAMINER WOODS: Now I don't know how you want
2 to handle the -- I'm sorry. Mr. Brown?

3 MR. BROWN: Can I have just one second,
4 please.

5 (Pause in the proceedings.)

6 I have nothing further.

7 EXAMINER WOODS: Thank you.

8 Ms. Franco-Feinberg?

9 MS. FRANCO-FEINBERG: No, nothing, Your Honor.
10 Thank you.

11 EXAMINER WOODS: Anyone else in the room?
12 Okay.

13 Let's go off the record just briefly.

14 (Whereupon at this point in
15 the proceedings an
16 off-the-record discussion
17 transpired and a short
18 recess was taken.)

19 EXAMINER WOODS: Any redirect?

20 MR. WEGING: No redirect.

21 (Witness excused.)

22 EXAMINER WOODS: All right. Let's go off the

1 record.

2 (Whereupon at this point in
3 the proceedings an
4 off-the-record discussion
5 transpired.)

6 EXAMINER WOODS: This cause is continued to
7 January 4, 2001, at 9:30.

8 (Whereupon the case was
9 continued to January 4,
10 2001, at 9:30 a.m. in
11 Springfield, Illinois.)

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)

3 CASE NO.: 00-0312 & 00-0313 (Consolidated)
 ON REHEARING
4
5 TITLE: COVAD COMMUNICATIONS COMPANY
6
7 RHYTHMS LINKS, INC.
8

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